

ORIGINAL

SUPERIOR COURT  
YAVAPAI COUNTY, ARIZONA

2010 APR 12 PM 1:53 ✓

JEANNE HICKS, CLERK  
S. KELBAUGH

BY: \_\_\_\_\_

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

THE STATE OF ARIZONA,

Plaintiff,

vs.

No. CR 2008-1339

STEVEN CARROLL DEMOCKER,

Defendant.

BEFORE: THE HONORABLE THOMAS B. LINDBERG  
JUDGE OF THE SUPERIOR COURT  
DIVISION SIX  
YAVAPAI COUNTY, ARIZONA

PRESCOTT, ARIZONA  
TUESDAY, MARCH 30, 2010  
3:06 P.M.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PRETRIAL MOTIONS

TESTIMONY OF BARBARA O'NON

ROXANNE E. TARN, CR  
Certified Court Reporter  
Certificate No. 50808

INDEXTESTIMONYPAGE

|    |                                    |    |
|----|------------------------------------|----|
| 1  |                                    |    |
| 2  |                                    |    |
| 3  |                                    |    |
| 4  |                                    |    |
| 5  |                                    |    |
| 6  |                                    |    |
| 7  |                                    |    |
| 8  |                                    |    |
| 9  | BARBARA O'NON                      |    |
| 10 | Direct examination by Mr. Butner   | 5  |
| 11 | Cross-examination by Mr. Sears     | 50 |
| 12 | Redirect examination by Mr. Butner | 71 |
| 13 |                                    |    |
| 14 |                                    |    |
| 15 |                                    |    |
| 16 |                                    |    |
| 17 |                                    |    |
| 18 |                                    |    |
| 19 |                                    |    |
| 20 |                                    |    |
| 21 |                                    |    |
| 22 |                                    |    |
| 23 |                                    |    |
| 24 |                                    |    |
| 25 |                                    |    |

MARCH 30, 2010  
3:06 P.M.

PRETRIAL MOTIONS

APPEARANCES:

FOR THE STATE: MR. JOE BUTNER AND MR. JEFF  
PAUPORE.

FOR THE DEFENDANT: MR. JOHN SEARS, MR. LARRY  
HAMMOND AND MS. ANNE CHAPMAN.

THE COURT: This is State versus Steven  
Carroll DeMocker, CR 2008-1339. We are set for a hearing on  
several motions.

Ladies and gentlemen, other than the  
actual participants, I am going to take the first motion with  
the witness first. And my understanding is that that was  
Ms. O'non, and Miss O'non is going to testify. And I am  
going to clear the courtroom of personnel that are not  
connected to either side of the case or to representing  
Miss O'non. So, if you all don't fit with any of those  
groupings --

Mr. Butner, with regard to Victim  
Services being here, do you have any problem with that?

MR. BUTNER: I think they should be able to  
stay.

THE COURT: Do you have any problem with the  
Victim Services being here?

MR. SEARS: No, Your Honor.

1 THE COURT: All right. They may stay.

2 I think we have another officer  
3 pertaining to the case.

4 MR. BUTNER: I don't see any reason he can't  
5 stay. I mean, I think if you were concerned about --

6 THE COURT: You were concerned more about the  
7 third parties or media types.

8 MR. HAMMOND: That's fine.

9 THE COURT: And the counsel for Ms. O'non, you  
10 don't have any objection to him staying?

11 MR. SEARS: No, of course not.

12 THE COURT: All right. Do you want to proceed  
13 with calling her, and then --

14 MR. BUTNER: I would like to, Judge.

15 THE COURT: -- Phil, if you would, in the  
16 meantime, lock the door after she is in and we'll take up  
17 issues relating to that. I just didn't want to read about it  
18 in the press tomorrow. More importantly, I didn't want the  
19 jury panel to read about it in the press tomorrow. And so  
20 this is in accordance of what both sides spoke of in chambers  
21 and before we got started here today.

22 Miss O'non, if you would come forward,  
23 please, someplace around the podium. You don't have to come  
24 all the way over to the clerk, but if you will raise your  
25 right hand, the clerk will swear you in.

1 THE CLERK: Do you solemnly swear or affirm  
2 upon the penalty of perjury the testimony you are about to  
3 give will be the truth, the whole truth, and nothing but the  
4 truth, so help you God?

5 THE WITNESS: I do.

6 THE COURT: Either side have any objection if  
7 her counsel takes a seat close by or in proximity?

8 MR. SEARS: No, Your Honor.

9 THE COURT: And for the record, it is  
10 Mr. Terribile that's -- sir, could you spell that.

11 MR. TERRIBILE: T-E-R-R-I-B-I-L-E.

12 THE COURT: Thank you.

13 Mr. Butner.

14 MR. BUTNER: Thank you, Judge.

15 BARBARA O'NON,  
16 called as a witness, having been duly sworn, testified as  
17 follows:

18 DIRECT EXAMINATION

19 BY MR. BUTNER:

20 Q. Ms. O'non, please state your full name for the  
21 record.

22 A. Barbara O'non.

23 Q. And what is your occupation?

24 A. Financial advisor.

25 Q. And for whom are you currently employed?

1 A. Wells Fargo Advisors.

2 Q. How long have you been there with Wells Fargo?

3 A. Since August.

4 Q. August of 2010?

5 A. '09.

6 Q. '09. Right. Okay.

7 And prior to that time, where did you  
8 work?

9 A. UBS Financial Services.

10 Q. And are you acquainted with the defendant in this  
11 case?

12 A. I am.

13 Q. And how long have you been known Mr. Steven  
14 DeMocker?

15 A. For probably somewhere between 11 and 13 years,  
16 right after we moved to Prescott.

17 Q. Okay. I'll try to move this along quickly.

18 At some point in time after coming to  
19 Prescott, Arizona, did you begin working with Steven  
20 DeMocker?

21 A. I did.

22 Q. When was that, approximately?

23 A. Approximately in -- I meant to review these  
24 dates -- '99, I believe.

25 Q. And where did you begin working with Mr. DeMocker?

1 A. A.G. Edwards.

2 Q. And what were your duties at that time?

3 A. I was his assistant.

4 Q. And so, would you describe for us what you did as  
5 his assistant at that point in time?

6 A. It was a clerical position of sorts. I answered  
7 phones, answered questions for clients that were just "What's  
8 my balance" kind of questions. Things like that.

9 Q. And did you graduate, so to speak, from that  
10 position as Mr. DeMocker's assistant?

11 A. I did.

12 Q. And approximately when did that occur?

13 A. That occurred -- well, I stayed his assistant,  
14 actually, for quite some time. I got licensed not too long  
15 after I started working for him. So when I stopped being his  
16 assistant would have been two or three years ago.

17 Q. Okay.

18 A. To the best -- it is probably three or four years  
19 ago.

20 Q. So would that be approximately 2006?

21 A. Probably pretty close.

22 Q. Okay. So you started performing a different job  
23 function in 2006. Would that be correct?

24 A. Yes.

25 Q. You became licensed, as you described it,

1 considerably before that; is that right?

2 A. Yes.

3 Q. What sort of licenses are you talking about, first  
4 of all?

5 A. I got a Series 7, which is a security license, an  
6 insurance license and, at that time, a State of Arizona  
7 license. They were all security-based licenses.

8 Q. And when did you get these licenses?

9 A. Probably around 2002 or '3.

10 Q. And were you still working at A.G. Edwards at that  
11 time?

12 A. Yes.

13 Q. And the Series 7 license allows to you perform the  
14 duties of a stock broker, financial advisor?

15 A. Yes.

16 Q. And the insurance license, of course, allows to  
17 you sell insurance?

18 A. Yes.

19 Q. And you described for us before, I think,  
20 primarily annuities, that kind of thing?

21 A. Yes.

22 Q. And then what does the State of Arizona license  
23 do?

24 A. It is just a license that would run along with the  
25 security license. Each of the states has their own licensing



1 bureau, so it is just a step off of the 7.

2 Q. So it is a State's securities license, so to  
3 speak?

4 A. Yes.

5 Q. And -- you got some water there?

6 A. Yeah, I do.

7 Q. Okay. And you worked at A.G. Edwards with  
8 Mr. DeMocker until approximately 2000 and what?

9 A. 2000 and -- I'm sorry. I meant to review all of  
10 these dates for you. I'm going to guess around 2003, maybe  
11 2004.

12 Q. And that's when you went to UBS?

13 A. Yes.

14 Q. And when you made the transfer over to UBS, were  
15 you still Mr. DeMocker's clerical assistant?

16 A. No, I was not.

17 Q. What was your job -- what were your job duties  
18 then?

19 A. At the point of leaving A.G. Edwards, I was a  
20 financial advisor.

21 Q. Okay. And in the transfer over to UBS, did you  
22 receive any financial payment, so to speak, from UBS as part  
23 of that transfer? Did you receive monies?

24 A. I received monies that Mr. DeMocker made sure that  
25 I got. I didn't get -- the -- UBS was paying Mr. DeMocker,

1 and he split some off to me.

2 Q. Okay. And what was your percentage that you  
3 received from Mr. DeMocker?

4 A. I believe it was 10-percent.

5 Q. And how much did you receive?

6 A. I believe it was around \$60,000.

7 Q. And was this in the form of an employee forgivable  
8 loan?

9 A. Yes, it was.

10 Q. Okay. And basically, the terms of that were what?

11 A. It was every year, a portion of it was forgiven  
12 over a certain amount of time. I think it was five, six,  
13 seven years. Every year a piece was forgiven.

14 Q. And you were taxed on that as income?

15 A. Yes.

16 Q. During the years as it was forgiven?

17 A. Yes.

18 Q. Okay. So if it was forgiven over five or six  
19 years, then you got taxed on that percentage each year?

20 A. Yes.

21 Q. Okay. Were you basically in a type of partnership  
22 with Mr. DeMocker?

23 A. I was paid a split off of the commissions that  
24 were earned.

25 Q. And what was your percentage of the commissions?

1           A.     At the end of our business relationship, I was  
2     paid 30-percent on the split, but it had grown from, you  
3     know, 5-, 10-percent, up through the years.

4           Q.     Okay. When you first started at UBS, it was  
5     approximately 5- to 10-percent?

6           A.     I don't recall that it was -- I don't recall what  
7     the percentage was, to tell you the truth. It would have  
8     been much lower than 30-percent.

9                     I didn't come over to UBS as a financial  
10    advisor, so I don't remember exactly what the split was.

11          Q.     Okay. But you did become -- shortly after  
12    arriving at UBS, you did become a financial advisor with  
13    them?

14          A.     I did.

15          Q.     And is that when the split started to increase?

16          A.     Yes.

17          Q.     And at some point in time during your business  
18    relationship with Mr. DeMocker did you two begin to have a  
19    more personal relationship?

20          A.     Yes.

21          Q.     Would you describe when that was, please.

22          A.     Probably about a year-and-a-half to two years  
23    after I started working with him.

24          Q.     And so approximately what year would that be?

25          A.     2001.

1 Q. Okay. And what was the nature of that more  
2 personal relationship that you had with Mr. DeMocker  
3 basically beginning around 2001?

4 A. It was an intimate relationship. Is that what you  
5 mean?

6 Q. Okay. And did you still maintain your business  
7 relationship while you had this intimate relationship with  
8 him?

9 A. We did.

10 Q. So you moved over to UBS with Mr. DeMocker.

11 How would you describe your business  
12 relationship with Mr. DeMocker when you moved over to UBS  
13 with him?

14 A. My business relationship -- it was as it always  
15 had been. We worked very well together.

16 Q. Okay. And at some point in time did your business  
17 relationship with Mr. DeMocker start to unravel?

18 A. Yes.

19 Q. When was that, approximately?

20 A. Probably somewhere around 2006, maybe 2007.

21 Q. Okay. And did your personal relationship also  
22 start to unravel with Mr. DeMocker?

23 A. Yes.

24 Q. And when was that?

25 A. Probably near around the same time. It could have

1 been before. I don't really remember, to tell you the truth.  
2 Both relationships were strained.

3 Q. And you would say this was 2006, 2007?

4 A. Uh-huh. Yes. Yes. I'm sorry. Yes.

5 Q. That's all right.

6 So, as a result of the unraveling, first  
7 of all, of the business relationship, what steps, if any, did  
8 you begin to take?

9 A. We initially tried to work out our differences.  
10 We were in dispute over money primarily and --

11 Q. What was the dispute over the money?

12 A. I felt that the split wasn't fair.

13 Q. Did you feel as if you weren't getting enough  
14 money to be treated fairly?

15 A. I felt as though I was doing more work than I was  
16 being paid for.

17 Q. And so what was your belief as to what would be  
18 fair?

19 A. I thought that we were more on a 50/50 percentage.

20 Q. And did you tell Mr. DeMocker this?

21 A. Yes.

22 Q. And what was his response to you?

23 A. He didn't agree.

24 Q. And so did you begin to take steps as a result of  
25 that disagreement?

1 A. We did.

2 Q. What did you do?

3 A. Initially, I moved out to the office in Surprise  
4 or Sun City for UBS.

5 Q. When did that occur?

6 A. About a year before the partnership came apart.

7 Q. And when you say about a year before the  
8 partnership came apart --

9 A. About 2007-ish, would be my guess, and --

10 Q. Let me ask you a question to clarify that.

11 A. Okay.

12 Q. When do you believe the partnership came apart?

13 A. The partnership officially came apart in 2008.

14 Q. And when in 2008?

15 A. The beginning of October.

16 Q. And that was when it was approved by management?

17 A. Yes.

18 Q. Had the partnership actually come apart at a prior  
19 time?

20 A. It would have come apart as of July -- the  
21 beginning of July. It was all set to go at that time.

22 Q. And what was the holdup at the beginning of July?

23 A. Steve's wife was found dead.

24 Q. So in essence, the partnership had come apart as  
25 of the beginning of July 2008 but for the stamp of approval

1 of management?

2 A. Yes.

3 Q. And approximately a year before that you had moved  
4 to the Surprise/Sun City office?

5 A. Yes.

6 Q. Sometimes around July or so of 2007?

7 A. Yes.

8 Q. Now, during this time frame when you moved to  
9 Surprise/Sun City, July of 2007, were you and Mr. DeMocker  
10 negotiating back and forth, trying to split up the clientele,  
11 so to speak?

12 A. We were.

13 Q. Were you doing that by way of e-mails?

14 A. Yes.

15 Q. And basically, if I understood your earlier  
16 testimony, you thought it should be done on a 50/50 basis?

17 A. I thought that the -- monetarily, it should have  
18 been 50/50. When that wasn't going to happen, the clients  
19 were split on a 70/30 basis.

20 Q. Okay. So you thought monetarily the split should  
21 be 50/50.

22 Did that mean the amount of assets being  
23 managed should be split 50/50?

24 A. We managed the assets together. So if we had  
25 stayed in the partnership, it wouldn't have been that I

1 handled half of the clients and he handled half. We handled  
2 them together.

3 Q. Right. I understand if you stayed in partnership?

4 A. Right.

5 Q. But you didn't stay in partnership; right?

6 A. No.

7 Q. You were negotiating to divide the partnership; is  
8 that correct?

9 A. That's right. And so at the time of the division,  
10 our split was 70/30. So 30-percent of the assets.

11 Q. So you got 30-percent of the total assets managed?

12 A. Yes.

13 Q. Okay. That is what I was trying to get at.

14 A. I'm sorry. Yes.

15 Q. All right. Now that wasn't necessarily based upon  
16 the number of clients; right?

17 A. No.

18 Q. It was based upon the dollar amount of assets  
19 being managed; is that right?

20 A. Yes. That's right.

21 Q. Okay. And in essence, the dollar amount of assets  
22 being managed, that is what generates the income for you.  
23 Would that be fair to state, more or less?

24 A. Uh-huh. More or less. Yes.

25 Q. So that was pretty much effectuated, if I



1 understood your earlier testimony, in July of 2008?

2 A. The names -- the list of names was done, yes.

3 Q. Right. Okay. Now in that year, 2007 to 2008, did  
4 you and Mr. -- let me be more precise.

5 In that year, July, approximately, of  
6 2007 to July of approximately 2008, did you and Mr. DeMocker  
7 continue to have a personal relationship?

8 A. Yes. At times, yes.

9 Q. And when I say this -- personal relationship, I  
10 mean an intimate personal relationship. Do you understand  
11 that?

12 A. Yes, I do.

13 Q. Okay. And yet, you were still negotiating back  
14 and forth, dividing the business; is that right?

15 A. Yes.

16 Q. And did this cause some difficulties in the  
17 personal relationship, also?

18 A. Yes.

19 Q. Okay. Would you describe those for us, please.

20 A. We were fighting over a business, so it made the  
21 personal relationship difficult to maintain. We were  
22 fighting over a business.

23 Q. Okay. And during that time frame when you were  
24 fighting over business, were there ever any incidents that  
25 you had with Mr. DeMocker where you were present, where you

1 observed him lose his temper?

2 A. Yes.

3 Q. Would you describe the first one, please.

4 A. The first time that I saw -- I never saw him lose  
5 his temper with anyone but me. The first time I saw him lose  
6 his temper was during an argument over which clients were  
7 going where. And I don't remember the exact nature of the  
8 argument, but I said something that angered Mr. DeMocker. I  
9 was standing in his doorway of his office, and he jumped out  
10 of his chair and just came face-to-face with me. He was  
11 angry. I don't even remember the words that were spoken, but  
12 he was angry with me.

13 Q. And where did this occur?

14 A. In the office in Prescott.

15 Q. The Prescott UBS office?

16 A. Yes.

17 Q. And approximately when did this occur?

18 A. It would have been sometime during that year. I  
19 am not sure.

20 Q. Well, was it in the wintertime, a cooler time of  
21 the year or --

22 A. As I recall, it may have been a warmer time of  
23 year, but I am really not certain.

24 Q. Okay. Now, this is the first time this occurred;  
25 is that right?

1 A. Yes.

2 Q. Was this sometime, then, in 2007, early on, when  
3 you were trying to divide these assets?

4 A. It would have been sometime in that year time  
5 period.

6 Q. Okay. And when Mr. DeMocker got face-to-face with  
7 you, were you afraid?

8 A. No.

9 Q. But this was the first time you had ever seen him  
10 lose his temper?

11 A. That was, yes.

12 Q. And when you say he got face-to-face with you, how  
13 close was he to you?

14 A. He was as close as that microphone is. He was  
15 face-to-face with me.

16 THE COURT: Four to six inches, is what you  
17 are saying?

18 THE WITNESS: Yes, probably. He was right up  
19 close to me.

20 BY MR. BUTNER:

21 Q. Okay. And you don't recall specifically what he  
22 said to you?

23 A. I don't. I am not even sure that he said  
24 anything, honestly. He could have just come across the room  
25 at me. I am not sure he said anything. I don't remember.

1 Q. Okay. When you describe how he came across the  
2 room at you, would you tell us, basically, how that occurred?

3 A. I said something from the doorway that angered  
4 him, and he jumped out of his chair and came around the desk  
5 and he came up in front of me, right next to me.

6 Q. And had you ever seen him exhibit this kind of  
7 behavior before?

8 A. No.

9 Q. Did this surprise you?

10 A. Probably. Yes.

11 Q. And did he ever do this again?

12 A. One other time. We got in an argument over  
13 clients. I remember the conversation around that argument.  
14 It was definitely about clients.

15 And I was sitting across the desk from  
16 him, and he was angry at what I said, and he pounded his  
17 fists on the desk and jumped out of his chair and walked out  
18 of the office. He left the office.

19 Q. And during this time when you and Mr. DeMocker  
20 were breaking up your business relationship, from your point  
21 of view, did it appear to you as if he was more quick to  
22 anger?

23 A. I don't really know that I would call it quick to  
24 anger. We were both angry at each other pretty consistently.  
25 I don't know that I would say he was quicker to anger, other

1       than those two instances. I would just say we were arguing.

2           Q.     Okay. Prior to 2007, had there ever been any  
3 instances like this?

4           A.     No.

5           Q.     Had you ever gotten angry with each other like  
6 that?

7           A.     Not like that. But we'd certainly gotten angry  
8 with each other. For the most part, we got along pretty  
9 well.

10          Q.     Okay. And this second instance when you had an  
11 argument, I think you described it as about a client; is that  
12 correct?

13          A.     Uh-huh.

14          Q.     Is that a yes?

15          A.     Yes. Yes.

16          Q.     Where did this occur?

17          A.     The second incident?

18          Q.     Right.

19          A.     In his office.

20          Q.     And is that his office in Prescott?

21          A.     Yes, in Prescott.

22          Q.     And approximately when did that occur?

23          A.     That was after the first one. It feels as though  
24 it was several weeks later.

25          Q.     And as a result of this argument and disagreement,

1 do you recall what the upshot was? What occurred?

2 A. Nothing occurred. It was an argument.

3 Q. You didn't resolve any problems?

4 A. No.

5 Q. Did Mr. DeMocker ever mention to you, basically,  
6 the circumstances of his marriage -- what was going on in his  
7 marriage primarily during the year of 2007 or in 2008?

8 A. Yes.

9 Q. What did he say to you starting, basically, in  
10 2007? Let's talk about then.

11 A. I am not sure I can separate it down to that year,  
12 because they were getting a divorce for quite some time, and  
13 most of the conversations around the marriage had to do with  
14 the divorce.

15 Q. Okay. Did Mr. DeMocker ever say to you that he  
16 was having difficulties dealing with his divorce?

17 A. He was unhappy about the way the divorce was  
18 proceeding at times.

19 Q. What did he say in that regard?

20 A. It was -- he was -- he wanted Carol to get a job,  
21 basically. He thought that Carol should get a job, and he  
22 was unhappy with her unwillingness to do that.

23 Q. Did he ever make any statements concerning wishing  
24 harm would somehow befall Carol?

25 A. I heard him say that he thought that they would

1 all be better off if she were dead. I didn't take him  
2 seriously.

3 Q. On how many occasions did he say they would all be  
4 better off if she were dead?

5 A. It wasn't a lot of times. Maybe three or four,  
6 maybe.

7 Q. Okay. And what was the context in which he first  
8 made that statement?

9 A. I think, if I remember correctly, it was probably  
10 around the children. He was unhappy with something. I don't  
11 remember exactly. But there were instances where he was  
12 unhappy with Carol around the children, and he thought that  
13 they would be better off if the kids were just with him.

14 Q. Did he say this in 2007?

15 A. I don't know for sure. I don't really know the  
16 date for sure.

17 Q. Do you recall him talking about this at any point  
18 in time as your business relationship with Mr. DeMocker was  
19 breaking up?

20 A. I don't recall that it was specific to or in  
21 correlation with the business coming apart. I assume it  
22 would have been before that. Through the business, our  
23 personal relationship was very rocky, so we were better  
24 friends before.

25 Q. Did he ever make any statements to you about

1     how -- what kind of financial circumstances he was finding  
2     himself in as a result of his divorce?

3             A.     I believe his financial circumstances were  
4     difficult prior to the divorce, and the divorce wasn't  
5     helping any.

6             Q.     Okay. What did he say about the divorce in terms  
7     of its effect on his financial circumstances?

8             A.     I don't recall anything specific he said. There  
9     were general conversations about two households and Carol not  
10    working and the difficulty of supporting all of the -- he had  
11    to support all of the households.

12            Q.     He indicated he was having a tough time making  
13    ends meet that way?

14            A.     No, I wouldn't say he would be that direct about  
15    it. That wouldn't be something that he would say. I knew  
16    him -- I knew his circumstances, and I knew it was tough.

17            Q.     Do you recall him making a statement at some point  
18    in time about how deep in debt he was?

19            A.     I don't recall the exact statement, but I do know  
20    that he was in debt.

21            Q.     Well, did he ever indicate to you that he was over  
22    a specific amount of money in debt?

23            A.     I believe I remember him saying to me that he was  
24    a million dollars in debt, at one point, but I don't know  
25    what the dates would have been around that.



1           Q.     Was that during the time that you and he were  
2 breaking up your business together, so to speak?

3           A.     I don't recall. It could have been, but I really  
4 don't recall.

5           Q.     Well, were you -- was he discussing how difficult  
6 he was having it in his divorce while your business was  
7 breaking up?

8           A.     Yes. But again, the divorce had been going on for  
9 sometime before the business started to break up, so when  
10 conversations happened either through our business  
11 termination or prior to that, I am not certain.

12          Q.     And did he ever indicate to you that he had been  
13 forced to borrow money?

14          A.     I knew he was borrowing money.

15          Q.     Did he say to you that he had been forced to  
16 borrow money?

17          A.     I was -- I was there when he was borrowing money.  
18 Money was transferring from his parents' accounts to his. So  
19 he was borrowing money from them.

20          Q.     Did he tell you how much money he had borrowed  
21 from his parents?

22          A.     He wouldn't have had to tell me, because I would  
23 have been there watching the accounts move. But I don't  
24 recall the dollar amount.

25          Q.     Do you recall him saying a specific dollar amount,

1 how he had borrowed X number of dollars from his -- his  
2 father, I think, is what he said?

3 A. You know, the conversation rings a bell, but I  
4 couldn't tell you for certain what he said the dollar amount  
5 was. I knew he was borrowing money from his father, and I  
6 believe from his mother, too.

7 Q. Do you recall telling us in the interview that he  
8 had borrowed \$60,000 from his parents?

9 A. I don't recall, but it could have been in an  
10 earlier interview.

11 Q. Does that sound about right to you?

12 A. That would make sense.

13 Q. So would that be a yes, it does sound about right  
14 to you?

15 A. Yes. It sounds like an amount that would be  
16 reasonable.

17 Q. And you had seen the evidence of those loans  
18 taking place?

19 A. Yes.

20 Q. And Mr. DeMocker, in fact, told you about those  
21 loans taking place?

22 A. Yes. He wouldn't have had to. I probably sent  
23 the paperwork.

24 Q. But the question is did he tell you that those  
25 loans were taking place?

1 A. He must have. I had to do the paperwork.

2 Q. So you did the paperwork to facilitate those  
3 transactions?

4 A. I would have.

5 MR. BUTNER: Could I have just a moment,  
6 Judge?

7 Q. Okay. You recall our interview taking place down  
8 at Osborn Maledon?

9 A. Yes.

10 Q. Okay. I wish I could tell you the date right  
11 offhand. I have it on my notes.

12 Was it in February of this year?

13 A. Yes.

14 Q. Okay. Do you remember in that interview I asked  
15 you at -- I will give you page and line.

16 MR. SEARS: Please.

17 BY MR. BUTNER:

18 Q. At Page 37, the lines aren't numbered. Right in  
19 the middle of the page, where I asked you were there any  
20 times when were you actually, really physically afraid of  
21 Steven DeMocker.

22 Do you remember me asking you that?

23 A. You may have. That would have been a logical  
24 question. It was a long day.

25 Q. Do you remember answering yes?

1           A.     I could have. I may have, yes. I may have  
2 answered yes.

3           Q.     Does that help refresh your recollection as to  
4 actually being physically afraid of Steven DeMocker when he  
5 got angry with you?

6           A.     I believe that I answered you something to the  
7 effect of any woman would be threatened by a man coming  
8 quickly across the room at her. So it would create a natural  
9 fear or hesitation, trepidation.

10          Q.     Do you remember that specific incident at the  
11 office in Prescott when he -- when you were talking about the  
12 business and you were standing in the doorway, and he jumped  
13 out of his chair, and the chair went flying back into the  
14 credenza?

15          A.     Uh-huh.

16          Q.     Is that a yes?

17          A.     Yes.

18          Q.     That was when he came up to you and was, as you  
19 put it, nose to nose with you?

20          A.     Yes.

21          Q.     And do you remember telling me in that interview  
22 that, basically -- that when you were trying to take the  
23 business apart, that through that year he was angry?

24          A.     Yes. He was angry.

25          Q.     So that would be the year of approximately July of

1 2007 to July of 2008. Is that what you were talking about?

2 A. Approximately, yes.

3 Q. And is that when, in fact, both of those incidents  
4 occurred when he physically scared you, when you felt  
5 physically afraid of him?

6 A. That would be my recollection. That would be the  
7 logical time that those things would have happened.

8 Q. Okay. And do you recall telling us basically  
9 that, in essence, he was always in cell phone contact?

10 A. Yes.

11 Q. He was always reachable by his cell phone?

12 A. Pretty much, yes.

13 Q. And it was -- as you put it, it was most uncommon  
14 for him to be out of touch.

15 A. I would call it uncommon, yes.

16 Q. Do you recall any instances when he was out of  
17 touch from his cell phone?

18 A. No. Not off the top of my head, I don't, no.

19 Q. Okay. And --

20 A. He would -- he would not answer his phone but call  
21 back. That type of thing.

22 Q. Do you recall how Mr. DeMocker always carried his  
23 workout bag with him?

24 A. Yes.

25 Q. And in his bag -- he carried it where?

1 A. It was in his trunk.

2 Q. Okay. And what did he carry in that bag?

3 A. Change of clothes. Assorted clothes.

4 Q. Okay. And did he carry shoes with him, also?

5 A. I would guess that there were shoes in there.

6 Q. This was for running and bicycle riding and that  
7 kind of thing?

8 A. Clothes could change throughout that bag, but it  
9 wouldn't be uncommon for shoes to be in there.

10 Q. Now we showed you a picture of the shoe at that  
11 interview. Do you recall that?

12 A. Yes.

13 MR. BUTNER: I guess I should have this marked  
14 as an exhibit.

15 May I approach, Judge?

16 THE COURT: You may.

17 BY MR. BUTNER:

18 Q. Let me show you what has been marked as Exhibit  
19 169. Do you recall that?

20 A. That's the picture you showed me.

21 Q. Right. Okay. And I asked you if you had ever  
22 seen any shoes like that in Mr. DeMocker's possession. Do  
23 you recall that?

24 A. Yes.

25 Q. What did you tell me, if you recall?

1           A.     I said that I wasn't sure about this particular  
2 shoe, but it wasn't an uncommon type of shoe for him to have.

3           Q.     He had a lot of different types of shoes; right?

4           A.     Yes, he did.

5           Q.     And carried shoes with him, basically, all the  
6 time along with his workout clothes?

7           A.     I don't know that they were all the time, but it  
8 would not be uncommon for him to have shoes in his bag.

9           Q.     Did Mr. DeMocker ever ask you --

10                   MR. BUTNER: Oh, I'd move for the admission of  
11 169 for the purposes of this hearing.

12                   MR. SEARS: No objection.

13                   THE COURT: 169 is admitted for this hearing.

14 BY MR. BUTNER:

15           Q.     Did Mr. DeMocker ever ask you to marry him?

16           A.     Yes.

17           Q.     When was the first time he asked you to marry him?

18           A.     I am not certain. I think it was before all of  
19 the difficulties started before us. It feels like it was  
20 just a general conversation. It came up when we were in his  
21 car.

22           Q.     What was your reaction, when he asked you to marry  
23 him, that time in the car?

24           A.     Apparently, I flattened myself against the window.  
25 I pushed myself up against the window, and he made a joke and

1 said "Look how you reacted to that."

2 Q. Right. Do you recall why you pushed yourself up  
3 against the window?

4 A. No. It was just a response.

5 Q. It was just a shock; is that right?

6 A. Yeah. Probably.

7 Q. And that occurred before you started breaking up  
8 the business relationship; is that correct?

9 A. As I recall, he was still married at the time. So  
10 yes.

11 Q. "As I recall" --

12 A. He was still married. I think I made a joke about  
13 that. "You're still married."

14 Q. Right. You were divorced by then, though; is that  
15 correct?

16 A. I was.

17 Q. When did you get divorced?

18 A. 2004.

19 Q. And so you were divorced about the same time that  
20 you went over to UBS?

21 A. Yes.

22 Q. And were there any other occasions that  
23 Mr. DeMocker asked you to marry him after that initial time?

24 MR. SEARS: Relevance. It's a 404(b) hearing,  
25 Your Honor.



1 THE COURT: Mr. Butner?

2 MR. BUTNER: Judge, the relevance is going to  
3 be that the defendant went back and forth on this kind of  
4 thing in their personal relationship and in their business  
5 relationship, and it evidences the strain that was going on  
6 with him throughout this divorce with Carol Kennedy, as well  
7 as the --

8 THE COURT: I've heard enough. I will allow  
9 the questioning with regard to trying to establish some basis  
10 for admitting it so you can make an offer of proof.

11 MR. SEARS: Thank you, Your Honor.

12 BY MR. BUTNER:

13 Q. Were there any other occasions when he asked you  
14 to marry him after that first one?

15 A. Yes.

16 Q. Did he ever ask you to marry him while you were  
17 breaking up the business?

18 A. Yes.

19 Q. How many times?

20 A. A couple of times.

21 Q. And what was your reaction?

22 A. I don't recall that I answered him in any way. I  
23 am sure I had a reaction. I don't remember what it was.

24 Q. You don't recall telling him anything?

25 A. I don't recall. I probably side-stepped the

1 question or hedged on it somehow.

2 Q. And then -- okay. So a couple of times while you  
3 are breaking up the business, and then the business broke up  
4 in July of 2008, basically?

5 A. Yes.

6 Q. And then did he ever ask you to marry him after  
7 that?

8 A. Yes.

9 Q. When was that?

10 A. The last time that I saw him, he asked me to marry  
11 him.

12 Q. And when was it that the last time -- when was the  
13 last time you saw him?

14 A. Approximately two or three weeks before he was  
15 arrested.

16 Q. Was it in October of 2008?

17 A. Would have been probably end of September, first  
18 of October.

19 Q. Where were you at when he asked you?

20 A. We were at my home in Anthem, on the back porch.

21 Q. And what did he specifically say to you?

22 A. He said that he had learned a lot about what he  
23 wanted out of life, and that the business didn't matter, that  
24 none of it mattered, that he wanted to be together, and we  
25 could go wherever I wanted and do whatever I wanted, but that

1 we would get married. I don't really recall how I answered  
2 him. I don't think I did.

3 Q. Did you ever have any conversation with  
4 Mr. DeMocker shortly after his wife's murder?

5 A. Yes.

6 Q. Approximately when?

7 A. To the best of my recollection, I believe it was  
8 two or three weeks after she was murdered.

9 Q. And where were you at?

10 A. I was in California, in San Diego.

11 Q. And where was he at?

12 A. He flew out to California.

13 Q. Okay. In the San Diego area?

14 A. Yes.

15 Q. Where were you at, specifically, there?

16 A. The name of the hotel?

17 Q. If you can recall.

18 A. I don't recall it. It is an old inn in San Diego.  
19 I don't recall the name of it. I've never stayed there  
20 since.

21 Q. Were you staying there together?

22 A. I had been there for about a week prior to his  
23 arrival. He arrived the day before I left. So he was there  
24 for one day, and I had been there about a week before.

25 Q. And he came to the inn?

1           A.     Yes.

2           Q.     Did he stay there with you?

3           A.     Yes, he did.

4           Q.     And what did he tell you about his wife's murder?

5           A.     He told me -- he told me where he was and what he  
6 had been doing that night.

7           Q.     What did he tell you in that regard?

8           A.     He told me that he had been on a bike ride. He  
9 named a geographical area, and he said to me, "You know where  
10 that is?" And I said no, I didn't. But he said it was out  
11 by Carol's house. They owned some land at one time. I think  
12 it was by the land they owned.

13                     And he had been on the bike ride, and he  
14 had gotten a flat tire, and he had to walk the bike back down  
15 the trail. He described it -- if I remember correctly, he  
16 described it as being pretty physical -- the exertion to get  
17 the bike back. It was a big ordeal.

18                     And he said that his cell phone was dead,  
19 and that he had gone back -- I believe he was supposed to  
20 have dinner with Charlotte -- his daughter Charlotte and her  
21 boyfriend. And he went back to his residence, to the club.  
22 And he was going to finish the workout -- as I recall, he  
23 said he was going to finish his workout, and he was going to  
24 call Charlotte from the workout center, but he remembered  
25 that he had a battery in his car -- a spare battery. So he

1 went back out to the car to get the battery. And heard from  
2 Charlotte, and realized he was missing his dinner.

3 And as I recall, he said he went home and  
4 had dinner with Charlotte and her boyfriend. And while they  
5 were having dinner, he said that Carol's mother had called  
6 and was upset that something had happened to Carol. And  
7 Steve was not inclined to go out and see what had happened.  
8 He felt that she was fine.

9 But Charlotte was concerned, he said.  
10 And so he sent Charlotte out. He told Charlotte and her  
11 boyfriend that they could go, and that if there were lights  
12 on in the house, that they could knock on the door. I think  
13 he said if they saw Carol in the kitchen, they could knock on  
14 the door. But if the house was dark or no movement, that  
15 they shouldn't go up to the door. And that when Charlotte  
16 was out there, the police were already there.

17 And he went out and was questioned  
18 through the night -- through that evening and into the night.  
19 And he told me what had happened that night and where he was.  
20 He told me what his story was.

21 Q. Did he tell you what happened to Carol?

22 A. He told me that she had -- that it was an  
23 accident. Now, I am not sure that that is actually right, at  
24 that point in that conversation. Previously, he had told me  
25 it was an accident.

1 Q. When was it previously that he told you it was an  
2 accident?

3 A. On the day after or the day of. The day after she  
4 was murdered, he told me it was an accident.

5 Q. Do you recall approximately what time of day you  
6 had that conversation with him?

7 A. That would have been early afternoon, maybe  
8 mid-afternoon.

9 The first conversation about the  
10 accident? Is that what you mean?

11 Q. About her homicide.

12 A. Yes. Yes.

13 Q. Early to mid-afternoon?

14 A. Yes. The day after, yes.

15 Q. The day after?

16 A. Yes.

17 Q. So that would have been July the 3rd?

18 A. Yes.

19 Q. Right?

20 A. Yes.

21 Q. Because you remember this very well, right,  
22 because July the 2nd was what event in your or your family's  
23 life?

24 A. It was my son's birthday.

25 Q. And that is where you spent July the 2nd, that

1 evening; is that correct?

2 A. Yes.

3 Q. So when Mr. DeMocker explained to you that he had  
4 been out riding his bike and so forth, did he tell you that  
5 he was aware that it was a homicide in that particular  
6 conversation, two to three weeks later, or was he still  
7 saying he thought it was still an accident?

8 A. I don't recall. It was obvious, at that point,  
9 that it was a homicide. He was afraid that he was going to  
10 be arrested. So obviously, we were all thinking that it was  
11 a homicide -- in the conversation in California.

12 Q. Now, in your personal relationship with  
13 Mr. DeMocker, that, too, was breaking up in 2007 through  
14 2008; is that correct?

15 A. It was breaking up often. Through the whole  
16 expanse of our relationship we were always trying to figure  
17 out something else.

18 Q. And did you end up sometimes in confrontation or  
19 arguments with Mr. DeMocker about your personal relationship?

20 A. Prior to the business coming apart?

21 Q. No. During the same time frame.

22 A. He didn't want the business or the personal  
23 relationship to come apart.

24 Q. Did he ever apologize to you for any of the  
25 misdeeds that you believed he had committed?

1 A. Yes.

2 Q. Would you tell us about that.

3 A. He was in relationship with other people through  
4 the time that I was in my relationship with him -- not just  
5 through that last year, but over the course of the  
6 relationship.

7 Q. And some of these other people being his wife that  
8 he was in the divorce with; right?

9 A. Absolutely.

10 Q. Carol Kennedy?

11 A. Yes.

12 Q. And was Rene Gerard one of those other people,  
13 too?

14 A. She was one of the people at the end. She came  
15 into Mr. DeMocker's life, as I saw it, as he and I were  
16 coming apart.

17 Q. And did he ever apologize to you about Rene  
18 Gerard?

19 A. Yes.

20 Q. Would you tell us about that.

21 A. It was the night that we spent in San Diego. I  
22 was asking him about Rene. I had asked him prior to that. I  
23 was suspicious that there was something going on with -- in  
24 his life with Rene. I had seen some things. And so I was  
25 asking him about it when we were in California.



1 Q. And what did he say in that regard?

2 A. He told me that it was a huge mistake and that he  
3 had only slept with her once, and it was all an error, and  
4 that it was over, and that she was upset.

5 Q. And how many times had he apologized to you about  
6 these problems in your relationship prior to that time?

7 A. Are you referencing that there were other women in  
8 our relationship and he was apologizing for it? I don't  
9 understand the question.

10 Q. Well, you had problems in the relationship that he  
11 apologized to you about; is that correct?

12 A. Yes.

13 Q. How many times did he do that?

14 A. I would have to count them off. I don't know that  
15 I could count them off. More than half a dozen times.

16 Q. And would you describe how these apologies were  
17 made by him.

18 A. They were warm and genuine. He was -- he was  
19 sorry. He was sad. He had made a mistake.

20 Q. And did he evidence his emotions in that regard?

21 A. Yes.

22 Q. How so?

23 A. There would be times that he would be in tears.  
24 There were times that he was grateful that I was going to  
25 listen, to hear him out. So yeah, they were emotional

1 conversations for both of us.

2 Q. How many times did he make tearful apologies to  
3 you?

4 A. Probably two or three.

5 Q. As a result of dividing the business relationship,  
6 did this reduce Mr. DeMocker's compensation -- his income?

7 A. It would have the potential of reducing it.

8 Q. Were you aware that it did?

9 A. I wouldn't have been. Once our business was  
10 apart, I wouldn't have known what he was earning or making or  
11 what new clients would have come in. I wouldn't have known  
12 about it.

13 Q. You maintained 30-percent of the business, so to  
14 speak, and he kept 70-percent; is that correct?

15 A. Yes.

16 Q. And of the 30-percent that you kept, did your  
17 income decrease on that 30-percent, stay the same, or go up  
18 after that?

19 A. No. Initially, my income decreased.

20 Q. Wasn't a real good year for the stock market, was  
21 it?

22 A. On top of everything else, no, it was not.

23 Q. And this is as of -- basically, as of July of  
24 2008; right?

25 A. Uh-huh. Yes.

1 Q. So you would have expected Mr. DeMocker to  
2 basically have experienced a similar sort of reduction in the  
3 part of the business that he kept?

4 A. That would be my assumption.

5 MR. BUTNER: If I may have a moment, Judge.

6 THE COURT: You may.

7 BY MR. BUTNER:

8 Q. On the evening of July the 2nd, you celebrated  
9 your son's birthday; is that correct?

10 A. Yes.

11 Q. Where were you at?

12 A. I was at a restaurant in Phoenix.

13 Q. What restaurant was that?

14 A. I was afraid you were going to ask me that. I  
15 don't recall the name of it, off the top of my head.

16 Q. Was it someplace out at Desert Ridge or something?

17 A. It was at the 101 and near Scottsdale Road, by the  
18 theater there. It's a hot wings kind of place.

19 Q. And what were you doing there that evening?

20 A. We had dinner.

21 Q. Okay. And you stayed down in the  
22 Phoenix-Scottsdale area that evening?

23 A. I headed home, I think, around 7:30 or so.

24 Q. And where was home at that point?

25 A. Anthem.

1 Q. Okay. And that evening, did you attempt to call  
2 Mr. DeMocker?

3 A. I sent him a text message.

4 Q. When was that?

5 A. It was right after I got home.

6 Q. Approximately what time was that, about?

7 A. I would guess 8:30-ish, maybe 9:00.

8 Q. Okay.

9 A. Could have been earlier.

10 Q. And did you hear from Mr. DeMocker that evening?

11 A. I got a phone call from him at midnight, which I  
12 didn't answer. I didn't hear the phone ringing.

13 Q. So you didn't actually have contact with him, but  
14 you saw a record that he called you around midnight?

15 A. Yes.

16 Q. And prior to that time, had you recently spent the  
17 weekend with Mr. DeMocker at a hotel down in the Phoenix  
18 area?

19 A. I had.

20 Q. Where had you stayed?

21 A. We had -- we were either at the Phoenician or  
22 maybe Palm.

23 Q. The Royal Palms?

24 A. Royal Palms, perhaps. I don't remember. Those  
25 would have been logical places.

1           Q.     Okay. And was that the weekend that Mr. DeMocker  
2 was going to meet his daughter at the airport and send her  
3 off to South Africa?

4           A.     Yes. I learned that later, yes.

5           Q.     In fact, were you at the hotel with Mr. DeMocker  
6 on Friday night down in Phoenix, and then he went to the  
7 airport the next day, Saturday, to send his daughter off to  
8 Africa?

9           A.     Yes.

10          Q.     Were you aware that he met with Carol and Katie  
11 that next morning?

12          A.     I learned the next morning that they were meeting,  
13 yes.

14          Q.     But you didn't know it the night before?

15          A.     I did not.

16          Q.     You found out when he was leaving the next  
17 morning?

18          A.     I found out the next morning. Carol was texting  
19 him, and he was texting her back. And I learned that they  
20 were all meeting and spending the day together.

21          Q.     How was it that you found out that Carol and  
22 Mr. DeMocker were texting each other, the next day, on  
23 Saturday?

24          A.     I was in the room while he was texting her and  
25 receiving texts. I asked him about it.

1 Q. And what did he say?

2 A. He said that they were going to get together as a  
3 family. They were all going to meet up and do some shopping  
4 and take Katie to the airport.

5 Q. And if I understood your testimony, then,  
6 Mr. DeMocker tried to call you at midnight, you didn't answer  
7 your phone on or about July the 2nd, and then the next day,  
8 on the 3rd, in the middle of the day to the afternoon is when  
9 you actually spoke directly with him?

10 A. Yes. He called me, yes.

11 Q. He called you then?

12 A. Yes.

13 Q. And that is when he told you that it was an  
14 accident?

15 A. Yes.

16 Q. Did -- after the murder of Carol Kennedy, did  
17 Mr. DeMocker ever ask you to take a trip with him?

18 A. Yes.

19 Q. Where to?

20 A. Colorado.

21 Q. When was that?

22 A. It would have been prior to my going to San Diego.  
23 So perhaps a couple of weeks after Carol was murdered.

24 Q. And did he tell you where in Colorado he wanted  
25 you to go?

1           A.     He wanted to go hiking and camping outside of  
2 Durango.

3           Q.     And did you go with him?

4           A.     No.

5           Q.     What was the reason that you didn't go with him?

6           A.     I --

7           Q.     Or reasons.

8           A.     I was really trying to be done with the  
9 relationship. He wanted to talk. We -- he wanted to go  
10 camping, and we never went camping. I thought that it was  
11 odd to want to go camping.

12          Q.     Had you ever gone camping with him?

13          A.     No.

14          Q.     So this was the first time that he asked to you go  
15 camping with him?

16          A.     As I recall.

17          Q.     And what did you think about that?

18          A.     I thought it was odd that he wanted to go camping.  
19 I thought it was odd.

20          Q.     And this was within the first couple of weeks  
21 after her murder?

22          A.     Yes.

23          Q.     Did he tell you why he wanted to go camping in  
24 Colorado?

25          A.     He wanted to talk. He thought that we needed to

1 talk and clear the air and see if we could save some of the  
2 relationship. He wanted to talk.

3 MR. BUTNER: If I could have just a moment,  
4 Judge.

5 Q. Now, he indicated to you that he wanted you to go  
6 camping with him, maybe try to save the relationship at that  
7 point; is that right?

8 A. That is my recollection. He wanted to talk. And  
9 my recollection is that he wanted to fix things between us.  
10 He wanted to fix things between us, make our relationship  
11 right.

12 Q. Had he ever made overtures like that to you before  
13 about trying to fix things?

14 A. Yes.

15 Q. And did you get things fixed when he did that?

16 A. We would get them fixed temporarily.

17 Q. What did you think about that?

18 MR. SEARS: Relevance.

19 THE COURT: Sustained.

20 BY MR. BUTNER:

21 Q. Did you feel as if you were being manipulated by  
22 Mr. DeMocker when he made those overtures about fixing  
23 things?

24 MR. SEARS: Leading.

25 THE COURT: Sustained.



1 BY MR. BUTNER:

2 Q. Concerning your personal relationship with  
3 Mr. DeMocker, how would you describe it?

4 A. Friendly and warm.

5 Q. Friendly. And was it a consistent, ongoing  
6 relationship?

7 A. For the most part. For the history of the  
8 relationship, we both -- I think that we both were trying to  
9 make our marriages work. Somehow we thought we could. And  
10 so the relationship would be on-again off-again, but it was  
11 always friendly.

12 Q. Okay. How did you -- what did you think when you  
13 found out that Mr. DeMocker had another relationship with  
14 Rene Gerard?

15 MR. SEARS: Relevance.

16 THE COURT: I will let you do it as an offer  
17 of proof.

18 MR. BUTNER: Thank you.

19 THE WITNESS: At the time that Rene Gerard was  
20 coming into his life, I was pretty much done. So I was not  
21 surprised anymore by that.

22 BY MR. BUTNER:

23 Q. Now you say not surprised anymore. On previous  
24 occasions, had you been surprised?

25 A. Yes.

1           Q.     And on how many previous occasions have you been  
2 surprised?

3                   MR. SEARS:   Relevance, Your Honor.   The  
4 State's indicated they're not going to go into the other  
5 relationships.   You've already ruled on this, Your Honor.

6                   THE COURT:   Mr. Butner, are you changing your  
7 mind about that?

8                   MR. BUTNER:   Judge, not really.   I don't want  
9 to get into all of the extra-marital affairs, but I want to  
10 demonstrate that Mr. DeMocker managed to manipulate this  
11 person, as well as others in his life.

12                   THE COURT:   Sustained.

13                   MR. BUTNER:   No further questions.

14                   THE COURT:   Cross.

15                   MR. SEARS:   Thank you, Your Honor.

16                               CROSS-EXAMINATION

17 BY MR. SEARS:

18           Q.     Ms. O'non, let's talk about these two incidents  
19 that you told us about now that took place at the UBS office  
20 here in Prescott in which you said Steve lost his temper.

21                               Can you be any more clear with us today  
22 about when either or both of those incidents took place?

23           A.     I'm sorry.   I can't.

24           Q.     Were they in the year 2007?

25           A.     It would have been through that year, between 2007

1 and 2008, that we were arguing aggressively about the split  
2 of the business. It would have been in that year. I'm sorry  
3 I don't know the exact dates.

4 Q. If I am understanding what you say, the first such  
5 incident is the one you described where Steve got up from his  
6 desk, you were in the doorway, and he came towards you and  
7 was standing very close to you; is that right?

8 A. That's right.

9 Q. Now were you or were you not physically afraid, at  
10 that moment, of Mr. DeMocker?

11 A. I recall that the emotion that came over me was  
12 one of calm. I became very calm and very still.

13 Q. Were you or were you not physically afraid of  
14 Steve DeMocker at that moment?

15 A. No. Probably not.

16 Q. Did Steve DeMocker raise his hand as if to strike  
17 you on that occasion?

18 A. No. He did not.

19 Q. Did Steve DeMocker threaten you with physical harm  
20 on that occasion?

21 A. His demeanor was physically harming. He was  
22 aggressive. His demeanor was aggressive.

23 Q. Did Steve DeMocker say anything to you that  
24 constituted a threat of imminent or future physical harm by  
25 him to you?

1 A. Not that I recall.

2 Q. Did you report that incident to anyone?

3 A. No. I did not.

4 Q. Did you tell anyone else about that incident until  
5 you talked to the police in this case?

6 A. No -- a friend.

7 Q. Who?

8 A. I would have told Susan Favor, a friend.

9 Q. When?

10 A. Probably sometime after it had happened.

11 Q. What did you tell her?

12 A. I would have told her the incident that happened,  
13 that he was angry, and that we had argued, and he had pushed  
14 the chair across the room, across behind him, and came at me.  
15 Came at me. Came up to me physically very close, very  
16 quickly.

17 I don't recall the conversation directly  
18 with her, but it would have been a normal conversation for us  
19 to have. She is a good friend.

20 Q. Did you report Mr. DeMocker to the police as a  
21 result of that incident?

22 A. I did not.

23 Q. Did you seek a restraining order against  
24 Mr. DeMocker as a result of that incident?

25 A. No.

1 Q. Did you ask that Mr. DeMocker be transferred or  
2 moved, so that you didn't work together?

3 A. I did, but not because of that incident.

4 Q. The second incident took place, I think you said  
5 today, several weeks later; is that right?

6 A. It would have been, yes. Two to several weeks  
7 later. It was after.

8 Q. If I understand your testimony, the sum total of  
9 that was that you were arguing with Steve about the breakup  
10 of the Book of Business, and he banged his fist on the table  
11 and got up and left the room; is that right?

12 A. That's correct.

13 Q. Were you physically afraid of Steve at that  
14 moment?

15 A. He left the room. No. He left the room.

16 Q. Did Steve DeMocker threaten you with imminent and  
17 future physical harm on that occasion?

18 A. No.

19 Q. Did Steve DeMocker raise his fist or his hand in a  
20 threatening manner to you?

21 A. No.

22 Q. Did you report that incident to anyone?

23 A. No.

24 Q. Did you tell anyone else about that incident until  
25 you spoke to police in this case?

1 A. No. I did not speak to the police.

2 Q. Did Steve DeMocker ever apologize to you for  
3 either or both of those displays of temper?

4 A. Absolutely.

5 Q. Did you accept his apology?

6 A. I did.

7 Q. And in fact, you continued on some basis to have a  
8 romantic relationship with Steve DeMocker after those two  
9 incidents and after Carol Kennedy was murdered; correct?

10 A. Yes, I did.

11 Q. Up to and including October of 2008 when  
12 Mr. DeMocker and you slept together at your home in Maricopa  
13 County, Arizona; correct?

14 A. Yes.

15 Q. And you had slept with Mr. DeMocker at a hotel in  
16 Phoenix on Friday, June 27, just days before Carol Kennedy  
17 was killed; is that right?

18 A. Yes.

19 Q. And in fact, you told us now about another  
20 incident where sometime after Carol was killed, you and Steve  
21 were together and slept together in San Diego in a hotel you  
22 can't remember the name of; is that right?

23 A. Yes.

24 Q. These incidents that you described in which  
25 Mr. DeMocker made some comment about perhaps he and his

1 children would be better off if Carol were dead were not  
2 taken seriously by you, were they?

3 A. They were not.

4 Q. You didn't think they were actual threats to kill  
5 Carol Kennedy, did you?

6 A. No, I did not.

7 Q. You thought that they were an expression of  
8 Steve's frustration over the divorce; correct?

9 A. That's correct.

10 Q. Did you report any of those incidents to the  
11 police?

12 A. No.

13 Q. But you did tell the police, when you were  
14 interviewed in this case, about those incidents, didn't you?

15 A. I did.

16 Q. You can't tell us when or where they happened?

17 A. No, I can't. I'm sorry.

18 Q. Can you tell us who, other than you and Steve  
19 DeMocker, were present when any of those statements were  
20 made?

21 A. I don't believe anyone else was present.

22 Q. You said that when Mr. DeMocker called you the day  
23 after Carol died, that he told you it was an accident. Is  
24 that your testimony here today?

25 A. Yes.

1           Q.     In fact, what he told you was that the police told  
2 him that they thought that it might have been an accident.  
3 That's what he said.

4           A.     That could be. That's probably correct, yes.

5           Q.     Do you see the difference in those two statements?

6           A.     No. I guess I don't. My assumption would be the  
7 police would tell him that it was an accident. So no, I'm  
8 sorry, I don't see the direct difference in the two.

9           Q.     Steve DeMocker didn't tell you that he knew it was  
10 an accident, did he?

11          A.     I don't recall. It would have made sense that he  
12 would say the police are saying it was an accident. That  
13 would be a logical statement.

14          Q.     Are you saying that your recollection is that  
15 Steve may have told you, on July 3, 2008, that the police had  
16 told him that it might have been an accident? Is that what  
17 you are saying?

18          A.     That could be, yes. That could be.

19          Q.     Do you recall which it was?

20          A.     I would lean more toward the police have told him  
21 it was an accident.

22          Q.     You didn't have any information that Steve was  
23 there and knew what happened to Carol.

24          A.     No.

25          Q.     In fact, what you understood was that Steve had



1 responded and the police told him what happened; correct?

2 Steve responded out to Carol's home, and the police told him  
3 what had happened?

4 A. Yes, the police told him that she was in the house  
5 and that --

6 Q. You didn't have a sense, on July 3, 2008, that  
7 Steve was the one that discovered Carol dead, did you?

8 A. No. No.

9 Q. In fact, you know he didn't; correct?

10 A. I know what he told me. He told me that he  
11 didn't.

12 Q. When Steve and you were together in San Diego, he  
13 told you what you described here today, about what he was  
14 doing, et cetera, et cetera; correct?

15 A. Yes.

16 Q. But at that time, Steve said that he thought that  
17 the police believed this was a murder and that he might be a  
18 suspect. That's what he was telling you; correct?

19 A. Yes. He was worried about being arrested, as I  
20 recall.

21 Q. He told you he didn't do it; correct?

22 A. Yes, he did.

23 Q. And he was afraid of being falsely accused;  
24 correct?

25 A. Yes, he was.

1           Q.     This call that you got in the middle of the night  
2 around midnight, was that a missed call on your phone or a  
3 voice mail from Steve?

4           A.     It was a missed call.

5           Q.     This camping trip that you describe that Steve  
6 wanted you to go on, you thought it was odd primarily because  
7 you had never done anything like that with Steve; is that  
8 right?

9           A.     That's correct.

10          Q.     You didn't think Steve was going to take you up in  
11 the mountains and kill you, did you?

12          A.     I didn't know what the purpose was. I wasn't  
13 going to go up into the mountains with Steve at that time.

14          Q.     You weren't afraid of Steve, then, were you?

15          A.     I was. At that time, I was.

16          Q.     But not so afraid that you weren't unwilling to  
17 sleep with him, a few days before Carol was murdered, in San  
18 Diego and in October after Carol was gone.

19          A.     A few days before Carol was murdered, no one could  
20 have known that was going to happen.

21                   Afterwards, I met him in San Diego  
22 because he wanted to talk and that was a comfortable place  
23 for me to talk and a more normal place for us to talk. The  
24 purpose of that San Diego visit was so that we could talk and  
25 he could spend the night. And I honestly can't explain to

1 you the last time that I stayed with him. I don't understand  
2 it myself.

3 Q. And did Steve DeMocker threaten you physically on  
4 any of those occasions, after Carol was murdered, that you  
5 saw him?

6 A. No, he did not.

7 Q. In fact, you said that the last time you were with  
8 Steve, he was talking about the two of you getting married;  
9 correct?

10 A. Yes, he was. Both times that I saw him were  
11 friendly, for the most part -- were friendly encounters.

12 Q. Let's talk about the settlement of your business  
13 dispute with Steve. You described in some detail and again  
14 here today for Mr. Butner that it was a difficult negotiation  
15 process over a long period of time between you and Steve  
16 regarding division of your business; correct?

17 A. That's correct.

18 Q. It is true, isn't it, though, that by the end of  
19 June, 2008, just before Carol died, you and Steve had reached  
20 an agreement?

21 A. Yes, that's right.

22 Q. And the only reason that agreement wasn't carried  
23 out earlier was that the necessary players from UBS who were  
24 required to approve it were on vacation and just not all in  
25 the same place.

1 A. That's correct.

2 Q. And in fact, there was supposed to be a meeting  
3 with you and Steve and higher-ups at UBS about the time that  
4 Carol was killed. And at that meeting, your expectation was  
5 that this deal between you and Steve would be approved;  
6 correct?

7 A. That's right.

8 Q. So that part of it was over?

9 A. Yes, it was.

10 Q. And you knew that Steve was divorced from Carol at  
11 the same time; correct?

12 A. Yes.

13 Q. And that his divorce had been settled and it was  
14 over, also?

15 A. Yes.

16 Q. And the split that you and Steve had agreed to,  
17 that had Carol not been killed would have gone into effect,  
18 was a 70/30 split of clients; correct?

19 A. Yes. Assets.

20 Q. So before that split, you got 30-percent of the  
21 whole, and Steve got 70-percent of the whole. That's how it  
22 worked; right?

23 A. The commission. Yes.

24 Q. And then afterwards, you were going to get a  
25 hundred percent of 30-percent, and Steve was going to get a

1 hundred percent of 70-percent of the clients; correct?

2 A. That's correct.

3 Q. And you agreed with that?

4 A. I didn't feel I had any choice. Yes, I agreed  
5 with that.

6 Q. However you felt about it, ultimately, had that  
7 meeting taken place in early July of 2008, you would have  
8 agreed to it?

9 A. Yes, I would have.

10 Q. Now, you talked to Mr. Butner about a decline in  
11 your business. 2007 was, at the end of the year, the  
12 beginning of the collapse of the stock market; correct?

13 A. Yes.

14 Q. In June and early July of 2008, neither you nor  
15 Steve had any idea that that was about to happen, did you?

16 A. The collapse of the stock market?

17 Q. Yes.

18 A. No.

19 Q. The failure of Goldman Sachs, all the things we  
20 know that triggered a global, economic panic; correct?

21 A. Yes. No one knew.

22 Q. So going back to your state of mind and Steve's  
23 state of mind, right about the time that Carol was killed, as  
24 far as you knew, things were going to continue in the market  
25 more or less the way they had over the previous year or two

1 years; correct?

2 A. Yes.

3 Q. And so your expectation was that even though you  
4 and Steve were going the split your business, you weren't  
5 going to do all that bad downstream. You should have been  
6 okay.

7 A. Yeah, I figured I would be okay.

8 Q. And presumably, Steve would have felt the same  
9 about his split; correct?

10 A. I don't know how he felt.

11 Q. The two of you were talking virtually every day  
12 about this, weren't you?

13 A. I don't recall that we had any conversations about  
14 the comfort level of the finances as they were done. I was  
15 comfortable that I would be okay. I would assume he would be  
16 okay, too, but I don't think that we had a conversation to  
17 that effect.

18 Q. Did you have any reason to think that Steve was  
19 desperately worried that this split was going to ruin him  
20 financially?

21 A. No.

22 Q. In fact, just the opposite; right? Steve was  
23 looking forward to it just like you were looking forward to  
24 it; right?

25 A. I never had the feeling that he was looking

1 forward to it. I think we both became exhausted of the  
2 fight. But I didn't have the sense that he was looking  
3 forward to it. I wouldn't say either of us was looking  
4 forward to it. It is what we evolved to.

5 Q. Perhaps I overstated that. You certainly were  
6 glad that whatever this dispute had been, it was about to be  
7 resolved.

8 A. I was glad to be done with the fight, yes.

9 Q. By the same token, you would have expected Steve  
10 to be glad that it was over, as well.

11 A. I would imagine he would have been glad.

12 Q. You told us, when we were together in Phoenix,  
13 that the end of your relationship with Steve was messy.

14 A. Yes.

15 Q. That was your word; right?

16 A. Yes, that was my word.

17 Q. Okay. And I think we get a sense, now, of how  
18 messy it was -- that you couldn't quite end the personal part  
19 of this even after the business relationship could have been  
20 over; is that right?

21 A. I did not end it as effectively and efficiently as  
22 I would have liked to.

23 Q. Now what happened, though, unfortunately, was when  
24 Carol died, UBS put the final approval of this split on hold  
25 for a period of time; right?

1           A.     That's correct.

2           Q.     And in fact, it wasn't until the very end, shortly  
3 before Steve was arrested, that UBS went ahead and approved  
4 this split; correct?

5           A.     That's correct.

6           Q.     So for July, August, September, and part of  
7 October of 2008, you were still in the same business  
8 arrangement, regarding the split of commissions, that you had  
9 been in before Carol died; correct?

10          A.     Yes.

11          Q.     Going into these loans from his parents, do you  
12 have any idea why Steve borrowed money from his parents?

13          A.     I believe he was having trouble making ends  
14 meet -- credit card bills and things.

15          Q.     Because he told you for years he had been paying  
16 all of Carol's expenses, all the kids' expenses, and his  
17 expenses out of his own pocket; correct?

18          A.     Yes, he had been.

19          Q.     And that after the divorce, that situation  
20 changed. You knew that; right?

21          A.     Well, yes. She was getting alimony. Is that what  
22 you mean? Yes.

23          Q.     And his obligations shrunk down considerably after  
24 the divorce settlement; correct? His obligations to Carol.

25          A.     I don't know that I would know the answer to that



1 definitively. He had a set amount that he was to pay, as  
2 opposed to all the expenses, but I don't know how they would  
3 correlate with each other.

4 Q. So what you knew of Steve's personal finances was  
5 based upon what Steve would tell you from time to time; is  
6 that right?

7 A. Yes.

8 Q. You didn't prepare Steve's tax returns for him,  
9 did you?

10 A. No, I did not.

11 Q. You didn't prepare Steve's balance sheets for him,  
12 did you?

13 A. No.

14 Q. You didn't keep his personal checking accounts for  
15 him, did you?

16 A. I did not.

17 Q. To the extent that Steve told you anything about  
18 his finances, I guess it would be based on what he wanted to  
19 tell you; correct?

20 A. Yes.

21 Q. These shoes that Mr. Butner showed you a picture  
22 of, let me see if I understand exactly what you are saying.  
23 You are not saying you have ever seen those shoes in the  
24 possession of Steve DeMocker, have you?

25 A. Not that I recall.

1 Q. When you say "those kinds of shoes," be more  
2 specific. Tell me what you mean by "those kind of shoes."

3 A. That the multi-color wouldn't have been unusual.  
4 In other words, those shoes are blue and white.

5 The lace structure is different, and so  
6 he would have those kinds of laces. The laces that run  
7 through the little holes.

8 But no, I don't recognize that particular  
9 shoe, no.

10 Q. Just how carefully did you study and catalog Steve  
11 DeMocker's athletic shoe collection over the time you were  
12 together?

13 A. I wouldn't say I studied or cataloged them, but  
14 they were lined up on his stairs going up to his apartment.  
15 I would pass them on a regular basis.

16 Q. When did you see shoes similar to the ones in that  
17 photograph?

18 A. All the time, in his apartment, there were shoes  
19 like that. Tennis shoes. Running shoes.

20 Q. You began a personal relationship with Steve prior  
21 to 2004. Is that what you are saying?

22 A. Yes.

23 Q. And that relationship continued on some level at  
24 least through 2006; correct?

25 A. Yes.

1           Q.     And you were in contact with Steve and in and out  
2 of his home here in Prescott on a regular basis from 2003 and  
3 2006; correct?

4           A.     Yes.

5           Q.     Can you tell us today what year you saw shoes  
6 similar to the ones in the picture that is in evidence?

7           A.     There were always shoes -- tennis shoes, running  
8 shoes -- lined up.

9           Q.     What kind of shoes are those in the picture?

10          A.     I would call those running shoes.

11          Q.     How many pairs of running shoes would Mr. DeMocker  
12 have at a time?

13          A.     At least half a dozen.

14          Q.     Did Mr. DeMocker tend to go through running shoes  
15 and replace them with new ones on a regular basis?

16          A.     He would get new running shoes on a regular basis.  
17 I am not aware that he was necessarily replacing them or  
18 wearing them out. I don't know that. He would just get new  
19 shoes. We didn't talk about why.

20          Q.     You weren't responsible for buying Mr. DeMocker's  
21 running shoes, were you?

22          A.     I was not.

23          Q.     Mr. DeMocker liked equipment and sporting goods --

24          A.     Yes.

25          Q.     -- and sporting clothes and shoes. That was an

1 interest of his; right?

2 A. Yes, absolutely.

3 Q. You didn't necessarily share that interest with  
4 him, did you?

5 A. I would work out with him, but I am not a -- I was  
6 not a runner. We would hike, take walks, and work out. Is  
7 that your question?

8 Q. You told us you don't camp; right?

9 A. I don't camp, no.

10 Q. And you don't rock climb; correct?

11 A. No. Not the way Mr. DeMocker does, no.

12 Q. Do you ski?

13 A. Poorly.

14 Q. Do you play golf?

15 A. Poorly.

16 Q. Mr. DeMocker, though, was very interested in all  
17 of those kinds of activities; correct?

18 A. Yes.

19 Q. Would it be fair to say, Ms. O'non, that you  
20 really don't know much about Mr. DeMocker's footwear  
21 collection from 2003 to 2007, other than you saw them from  
22 time to time?

23 A. That would be the only way I would have knowledge  
24 of his footwear. I saw them.

25 Q. Mr. DeMocker didn't talk to you about the

1 different kinds of shoes that he had, did he?

2 A. I think that we did have a conversation about the  
3 different kinds of shoes, but I don't really recall it was a  
4 technical conversation. I was just listening. I wasn't  
5 really paying close attention to what he was saying. But I  
6 believe the shoes had different purposes.

7 Q. What purpose do you believe the shoes in the  
8 picture you were shown here today had?

9 A. I wouldn't know. I assume those are running  
10 shoes. But as you pointed out, I don't have a lot of  
11 technical knowledge, and I assume they are running shoes.

12 Q. Did you see any similar shoes in Mr. DeMocker's  
13 possession at the end of June or early July of 2008?

14 A. I don't recall that I was at his house in that  
15 time period.

16 Q. When was the last time you were in his house?

17 A. I am not sure.

18 Q. Was it in 2007?

19 A. Probably.

20 Q. Was it after the divorce was filed?

21 A. Yes.

22 Q. Was it at Christmas 2007?

23 A. Could have been.

24 Q. Did Mr. DeMocker have shoes similar to the ones in  
25 the photo the last time were you in his house?

1           A.     I don't recall that there was never a time that  
2 shoes weren't stacked up on the stairway. They were always  
3 there.

4           Q.     How many pairs of shoes similar to the ones in the  
5 photograph that you have seen today were stacked up on the  
6 stairway at any one time?

7           A.     At least half a dozen.

8           Q.     They were all the same?

9           A.     They were all the same types of shoes. They were,  
10 for the most part -- no, there were some that were more  
11 casual shoes. But for the most part, they were what I would  
12 call tennis shoes.

13          Q.     Are the shoes in that picture tennis shoes?

14          A.     I would call them tennis shoes. Again, I am not  
15 versed in the different types of shoes. Some are running  
16 shoes. Some are hiking shoes. Some are workout shoes. I  
17 would classify all of them as tennis shoes.

18          Q.     I want to be very clear here. Are you saying here  
19 today under oath that you saw sometime in 2007 a pair of  
20 shoes identical to or similar to the ones in the picture you  
21 have seen today at Mr. DeMocker's home?

22                   MR. BUTNER: Objection. Asked and answered  
23 repeatedly.

24                   THE COURT: Overruled.

25                   THE WITNESS: Sorry. Could you give me the

1 question again.

2 MR. SEARS: May I have it read, Your Honor?

3 THE COURT: Yes, you may. Roxanne.

4 (Whereupon, the relevant portion  
5 of the record was read back.)

6 THE WITNESS: Thank you.

7 I would say I saw shoes that were similar  
8 to. I am not sure that they were identical. I can't  
9 identify.

10 BY MR. SEARS:

11 Q. How were they similar?

12 A. They would be similar in that there would be dual  
13 colors, and they would be laced in a way similar to that  
14 lacing on that shoe.

15 Q. How many different pairs on how many occasions?

16 A. Every time I was there, at least half a dozen.

17 MR. SEARS: No other questions, Your Honor.

18 THE COURT: Mr. Butner, redirect?

19 MR. BUTNER: Thank you.

20 REDIRECT EXAMINATION

21 BY MR. BUTNER:

22 Q. Okay. You indicated in your earlier testimony on  
23 cross-examination that the first incident involving  
24 Mr. DeMocker being angry, that his demeanor was physically  
25 harming and aggressive.

1 Did you look in his eyes when that took  
2 place?

3 A. I did.

4 Q. And what did you see?

5 A. He was angry.

6 Q. And is that what caused you to physically fear  
7 him?

8 A. I would say that his actions and his demeanor were  
9 threatening.

10 Q. And you indicated that you didn't take  
11 Mr. DeMocker seriously when he mentioned a couple of  
12 times -- two or three times, I think as you put it -- that he  
13 wished Carol were dead?

14 A. I did not take him seriously, no.

15 Q. Did he ever mention anybody else that he wished  
16 were dead?

17 A. No.

18 Q. You are quite certain of that?

19 A. Yes.

20 Q. When you had the first conversation after Carol  
21 Kennedy's homicide with Mr. DeMocker, he indicated to you  
22 that he believed it was an accident; is that correct?

23 A. Yes.

24 Q. Would it be fair to state that he led you to  
25 believe it was an accident?



1           A.     I had no reason to doubt what he said, that it was  
2 an accident.

3           Q.     And did you then believe it was an accident?

4           A.     I didn't know.

5           Q.     Did he indicate to you that he did not find her  
6 dead?

7           A.     He told me that he arrived at the house and the  
8 police were there.

9           Q.     And did he tell you who it was that told him that  
10 Carol was dead?

11          A.     Charlotte. The police called, Charlotte arrived,  
12 and the police called the house.

13          Q.     You indicated to Mr. Sears that you were afraid to  
14 go camping on the trip to Colorado; is that correct?

15          A.     Yes.

16          Q.     And why was that?

17          A.     It was an unusual request, and something that was  
18 horrible had just happened. I was more concerned with the  
19 unusual request to go camping than --

20          Q.     Was it an unusual request when it was juxtaposed  
21 with the murder of Carol Kennedy? Is that what you are  
22 telling us?

23          A.     That didn't help it. That made it more worrisome  
24 for me. But it was an unusual request, period.

25          Q.     Why was it more worrisome for you when you thought

1 about the Carol Kennedy homicide?

2 A. Because I had no idea what happened, and I wasn't  
3 going to place myself at that time in a position  
4 where -- we've already established I don't know how to -- I  
5 am not an outdoors person. I wouldn't know how to take care  
6 of myself outside out of doors. And that would be true,  
7 actually, regardless of Carol's murder.

8 Q. In this particular instance, as a result of Carol  
9 Kennedy's homicide, were you afraid to be alone with Steve on  
10 a camping trip in Colorado?

11 A. On a camping trip, yes. I was not willing to do  
12 that.

13 Q. Pardon?

14 A. I was not willing to go camping with him.

15 Q. Did Steve ever talk to you about the terms of his  
16 divorce?

17 A. I'm sure he did. I don't remember the exact  
18 conversation. He put the divorce decree in front of me at  
19 one point and asked me if I needed to read it, and I said I  
20 did not.

21 Q. Did he indicate to you that he was concerned about  
22 all of the money that he was going to have to pay out as a  
23 result of that divorce decree?

24 MR. SEARS: Beyond the scope of cross, isn't  
25 proper redirect.

1 THE COURT: Overruled.

2 You may answer.

3 THE WITNESS: He was worried about it.

4 BY MR. BUTNER:

5 Q. What did he say in terms of being worried about  
6 it?

7 A. It was a large sum of money. Maybe worried is  
8 mistating. He was not happy with the amount of money that he  
9 was going to have to pay Carol.

10 Q. Did he tell you how much he was going to have to  
11 pay?

12 A. He did, but I don't recall what the amount was.

13 Q. Was he upset about that?

14 A. He thought it was -- it was generous to her.

15 Q. Did he think it was unfair?

16 A. Yes.

17 MR. SEARS: Objection, Your Honor. This is  
18 all new ground not covered in cross.

19 THE COURT: Sustained.

20 BY MR. BUTNER:

21 Q. Did he express to you any other views about the  
22 amount of money he had to pay to Carol, besides it being  
23 generous?

24 MR. SEARS: Same objection.

25 THE COURT: Overruled.

1 THE WITNESS: Answer?

2 THE COURT: You may.

3 THE WITNESS: He didn't think it was fair.

4 BY MR. BUTNER:

5 Q. Now you called these shoes tennis shoes. Were you  
6 aware of Steve playing tennis?

7 A. No.

8 Q. Did he ever play tennis, to your knowledge?

9 A. I believed he played tennis when he was younger,  
10 but not during the time I knew him. I wasn't aware that he  
11 ever played tennis.

12 Q. So that term "tennis shoes" that you use, that is  
13 basically a general category of athletic shoe. Would that be  
14 fair to state?

15 A. Yes.

16 Q. Generic.

17 A. Yes.

18 Q. Did Steve ever tell you how he felt about Carol's  
19 death?

20 A. I don't think he did. I don't recall him ever  
21 talking to me about how he felt about Carol's death. I don't  
22 believe that was -- I didn't question him. I let him talk.  
23 I let him tell me what he wanted to tell me.

24 Q. Did he ever say anything about her death?

25 A. As far as how he felt about it?

1 Q. Right.

2 A. Not that I recall.

3 Q. Never said anything?

4 A. Not that I recall.

5 Q. Never expressed remorse about her death?

6 THE COURT: Asked and answered, Counsel.

7 MR. BUTNER: Judge, I would like leave to  
8 re-open a little bit for this one brief thing.

9 THE COURT: What's the brief thing?

10 MR. BUTNER: This handwritten list we believe  
11 that came from the defendant, Mr. DeMocker. We call it the  
12 "Barb and Carol list," so to speak.

13 THE COURT: 170.

14 MR. BUTNER: It's Exhibit 170.

15 THE COURT: You may.

16 MR. BUTNER: Thank you.

17 Q. Let me show you what has been marked as Exhibit  
18 170.

19 First of all, do you recognize the  
20 handwriting?

21 A. Yes.

22 Q. Whose handwriting is that?

23 A. Steve's.

24 Q. And secondly, have you ever seen that particular  
25 item before?

1           A.     The police showed it to me.

2           Q.     Okay.  And what did you -- what do you understand  
3 it to be?

4           A.     I don't know what it is.

5           Q.     Did you ever have any discussions with Steve about  
6 him preparing such a list, so to speak, of Barb, Carol, Barb,  
7 Carol?

8           A.     No.

9           Q.     Did Steve ever discuss with you a balancing, if  
10 you will, of Barb versus Carol?

11          A.     No.

12          Q.     Did he ever indicate to you in some fashion that  
13 you had somehow come out ahead of Carol in his life?

14          A.     No.  Not that I recall, no.

15                   MR. BUTNER:  I don't have any further  
16 questions, Judge.

17                   THE COURT:  I will allow recross, as well.

18                   MR. SEARS:  No questions.

19                   THE COURT:  May Miss O'non be excused, then,  
20 as far as you are concerned, from further participation today  
21 to go about her business?

22                   MR. BUTNER:  She may.

23                   MR. SEARS:  As far as we are concerned, yes.

24                   THE COURT:  You are excused to go about your  
25 business.  Thank you for having been here.

1 THE WITNESS: Thank you.

2 THE COURT: Thank you, Mr. Terribile.

3 MR. TERRIBILE: Thank you, Your Honor.

4 THE COURT: It's a quarter to 5:00. Where are  
5 you going to next in connection with this testimony or other  
6 presentation today?

7 MR. SEARS: Our position, Your Honor, is that  
8 the State has the burden on the 404(b) issues, and the State  
9 has now elicited evidence of a number of the matters that are  
10 the subject of our 403 objection here. I think probably,  
11 unless the State has other evidence, the matter could be  
12 argued.

13 THE COURT: Mr. Butner or Mr. Paupore, any  
14 additional witnesses to present this afternoon on the 404,  
15 403 issue?

16 MR. BUTNER: No additional witnesses, Judge.

17 THE COURT: Do you want to argue this or just  
18 submit it? What do you want to do?

19 MR. BUTNER: Judge, I think it's appropriate  
20 to argue it at this point in time.

21 THE COURT: Go ahead.

22 MR. BUTNER: Basically, Judge, we are asking  
23 the Court to allow the admission of evidence through the  
24 testimony of Barb O'non, first of all, about the breakup of  
25 their business relationship, and then also the breakup of

1 their personal relationship, and how this appeared to have an  
2 effect upon Mr. DeMocker. He became increasingly angry  
3 during that year, and he evidenced that anger by the change  
4 in his demeanor on at least two occasions.

5 She described them both: when he came  
6 across the room at her and in the office in Prescott and was  
7 nose to nose with her, with the chair going back into the  
8 credenza, and she indicated that she was physically scared at  
9 that point in time. And then, of course, the second incident  
10 when they were in an argument about a client, and he pounded  
11 his fists on the desk.

12 Even though he didn't come at her in a  
13 threatening fashion at that point in time, it demonstrates  
14 that he was increasingly angry during that period of time, in  
15 which he was going through not only a divorce with Carol  
16 Kennedy, but also a division of his business with Barbara  
17 O'non and a division of that personal relationship that he  
18 had with Barbara O'non.

19 We are asking the Court to allow her  
20 testimony that he was physically threatening and aggressive,  
21 and she saw anger in his eyes in that first incident, and  
22 then she observed him to be angry in the second incident.

23 We also are asking the Court to allow her  
24 to testify about the fact that he stated to her that he  
25 wished that Carol Kennedy were dead on at least two or three



1 occasions, and he never said that about anybody else.

2 That she was in fear of Mr. DeMocker and  
3 afraid to go to a camping trip with him to Colorado, because  
4 it was close to the time of that homicide. And this was, of  
5 course, additional evidence of his increasingly aggressive  
6 nature and anger as a result of the difficult financial  
7 circumstances that he found himself in.

8 We are asking the Court to allow her to  
9 testify as to how Mr. DeMocker thought that the terms of the  
10 divorce were not fair, that he was worried about paying the  
11 money, and it was a large sum of money that he had to pay.

12 We are also asking the Court to allow her  
13 to testify and -- and you know, a lot of these -- a number of  
14 these things I don't think are actually 404(b) evidence,  
15 Judge, but they are things that Ms. O'non is going to testify  
16 about, and I think it is appropriate to bring them to the  
17 Court's attention.

18 We are asking the Court to allow her to  
19 testify that Mr. DeMocker basically never said anything to  
20 her about Carol's death. Never. No remorse. Nothing like  
21 that.

22 We are also asking the Court to allow her  
23 to testify about the type of shoes that he had, that the  
24 shoes that we showed in the picture were consistent with the  
25 type of shoes -- similar to the type of shoes he had all the

1 time. She saw half a dozen pairs there, basically all the  
2 time, of a similar nature.

3 And in this same vein, this is where the  
4 e-mails come into play in regard to e-mails between  
5 Mr. DeMocker and Barb O'non. Those e-mails basically  
6 evidence the split of the business relationship between  
7 Mr. DeMocker and Barbara O'non, and they evidence the  
8 increasing financial pressure on Mr. DeMocker as a result of  
9 that split. We are asking that the Court allow those  
10 specific types of e-mails. They would be e-mails from  
11 Mr. DeMocker to Ms. O'non indicating efforts at dividing  
12 their business relationship. Ultimately, it ended up being a  
13 70/30 division.

14 And we are asking that the Court allow  
15 her testimony as a result of that, that Mr. DeMocker admitted  
16 to her that he was a million dollars in debt, that he had  
17 borrowed \$60,000 from his parents.

18 We are also asking that the Court allow  
19 her testimony that he had asked her to marry him a number of  
20 times before Carol Kennedy's death and then at least one time  
21 after Carol Kennedy's death.

22 We were asking the Court to allow her  
23 testimony that she spent the night with him on Friday night,  
24 the Friday before the Saturday at which Katie DeMocker was  
25 taken to the airport. And that Saturday is the Saturday

1 preceding the Wednesday upon which Carol Kennedy was  
2 murdered.

3 And of course, we were also asking that  
4 she be allowed to testify about the story that Mr. DeMocker  
5 told her about where he was and what he had been doing, the  
6 bike ride, and that explanation of his actions on the evening  
7 of Carol Kennedy's homicide.

8 And of course, the relevancy of all of  
9 this is the personal pressure of the breakup of his  
10 relationship with Barb O'non and his wife Carol Kennedy and  
11 the pressure of the expenses involved in his divorce, and the  
12 expenses or loss of income involved in his business breakup,  
13 all of this being a relevant financial motivation that led  
14 him to kill Carol Kennedy. I think that basically addresses  
15 it, Judge.

16 THE COURT: Thank you.

17 Mr. Sears.

18 MR. SEARS: Thank you, Your Honor. From our  
19 perspective, Judge, you can separate some of what Mr. Butner  
20 has said and what Ms. O'non has testified to today out as  
21 what we think are improperly noticed 404(b) prior acts of the  
22 defendant. Specifically, these two instances of supposed  
23 anger on the part of Mr. DeMocker I think are precisely the  
24 kind of bad acts that Rule 404(b) talks about. We know that  
25 such evidence under Rule 404(a) is not permissible to show

1 conformity of conduct, unless it meets one of the exceptions  
2 of 404(b).

3 And here is the sum total of what they  
4 have put on today. Remember, they have to prove to you  
5 first, by clear and convincing evidence, that these acts took  
6 place. They were unwitnessed, unreported. She says today  
7 that she told a girlfriend about this. She didn't seek law  
8 enforcement intervention. She didn't seek a restraining  
9 order. And she said that she asked eventually to be  
10 separated from Mr. DeMocker at work, but not because of those  
11 incidents.

12 She said, as to both of them, they did  
13 not involve any actual physical harm or threats of physical  
14 harm. She said that she was not afraid of Mr. DeMocker. She  
15 said that she was actually calm during the first incident.  
16 She said the second incident was over as quickly as it began  
17 when Mr. DeMocker got up and left the room.

18 We have told you in our moving papers in  
19 connection with this motion, Your Honor, that what this is is  
20 the State's attempt to replace actual evidence of  
21 Mr. DeMocker's guilt in this case with improper character  
22 evidence, to try to convince the jury that if a person is as  
23 bad a person as they want to paint Mr. DeMocker to be in this  
24 case, then it is likely that he could have committed this  
25 crime, even though they have no actual proof that he did.

1 That is precisely what 404(b) is designed to prevent in this  
2 case, is improper character evidence. The State has tried to  
3 slide around a bit today, with this witness, and come at this  
4 argument from a slightly different perspective, saying that  
5 it's all a part of this larger picture they want to create  
6 for the jury that Mr. DeMocker was under increasing pressure.

7               Nonetheless, when you isolate out these  
8 instances, I think all we have is Miss O'non's testimony that  
9 these happened. But more importantly, we have testimony that  
10 they weren't actual threats of physical violence. So all  
11 they are is an example of somebody losing his temper, if you  
12 believe what she said, during a stressful period of time,  
13 months, if not years before the murder of Carol Kennedy.

14              To say, then, that it is relevant and  
15 admissible and meets the 403 probative value, prejudicial  
16 effect test makes very little sense under the circumstances.  
17 Really, when you strip away the arguments, it is simply an  
18 attempt by the State to show on two limited occasions that  
19 Mr. DeMocker got angry with somebody. And to bootstrap that  
20 into an argument to the jury or an inference to the jury that  
21 a person that got angry once, under those circumstances,  
22 could then violently and brutally murder Carol Kennedy. That  
23 is exactly what they want to do, and that's exactly what  
24 404(b) is designed to protect people in Mr. DeMocker's  
25 situation from. They've offered no exception to the general

1 rule of admissibility that fits the facts of this case. .

2 The statements of Mr. DeMocker that she  
3 testified to, about Carol being dead, weren't really that he  
4 wished Carol dead. Her testimony here today was that  
5 Mr. DeMocker said perhaps he and his family would be better  
6 off if Carol was dead. But most importantly, she said that  
7 she did not take them seriously, that they were simply  
8 expressions of frustration by Steve during the divorce. She  
9 did nothing about them. She couldn't remember how many times  
10 he said that or who was present or where they were said or  
11 even when it was.

12 But the prejudicial effect of 403 is  
13 obvious. The State would like to have a witness that said  
14 Mr. DeMocker threatened the life of Carol Kennedy. That is  
15 not what Barbara O'non's testimony says. To allow Barbara  
16 O'non to repeat this story in front of the jury violates  
17 Rule 403, presents highly prejudicial evidence to the jury  
18 for no other purpose than to get the jury thinking that if  
19 Steve DeMocker once said that, perhaps he could have done it.  
20 And that is what Rule 403 is designed to prevent.

21 The story about being afraid to go on the  
22 camping trip with him is confusing to us. It is difficult to  
23 understand precisely what she is saying, whether she is  
24 saying she didn't go because she doesn't camp or because she  
25 was somehow uneasy about Mr. DeMocker making this request,

1 which she described as odd.

2 But her conduct after that, I think,  
3 tells us a great deal about the validity of that, that she  
4 couldn't find it in herself to maintain that fear level, when  
5 Mr. DeMocker was with her in San Diego or when Mr. DeMocker  
6 was in her home in Anthem. She found it acceptable at that  
7 point to have a sexual relationship with Mr. DeMocker. She  
8 just didn't want to go off camping with him.

9 The prejudicial effect of that is  
10 obvious. The State wants the jury to be thinking that  
11 Mr. DeMocker was going to take her up into the woods and beat  
12 her to death. That is exactly what they want that evidence  
13 in front of the jury for, and for no other purpose, because  
14 it has no relevance, if it is not for that improper purpose.

15 The statements about the business split  
16 and the increasing pressure are also troublesome and are  
17 probably a mixed 404(b) prior acts, which the State has not  
18 come close to proving, has presented no evidence to prove any  
19 of those things, simply the testimony of this witness. But  
20 regardless, her testimony here today is pretty clear that  
21 whatever the stress was and whatever the disagreements they  
22 had over time through 2007, the first part of 2008, in the  
23 days and weeks leading up to Carol Kennedy's death, the split  
24 of the business between Steve and Barb was done and it was  
25 simply waiting for the UBS higher-ups to come back and bless,

1 and it would have been done.

2                   So any suggestion that that testimony is  
3 probative of any fact close to what the State is suggesting,  
4 which is that it was part of this pent-up rage that  
5 Mr. DeMocker had or this increasing pressure, is undercut by  
6 their own witness. She says that is not true. She says it  
7 was over. It was done. Therefore, the prejudicial effect of  
8 allowing the State to present through this witness the  
9 details of this long dissolution of their business  
10 relationship is obvious, because at the end, it doesn't fit  
11 their theory.

12                   So all they want to do is to present  
13 evidence that Mr. DeMocker was fighting with her at the same  
14 time he was fighting with Carol over their divorce, and skip  
15 over the fact that on July 2nd, 2008, both the divorce and  
16 the division of his business relationship with Barb O'non  
17 were done, were over and resolved. 403 is designed to  
18 protect Mr. DeMocker from that prejudicial evidence that has  
19 no probative value. It has no intrinsic probative value in  
20 this case.

21                   The concerns we have in this case, I  
22 think, are exactly what was happening here during Ms. O'non's  
23 testimony. If the State were going to limit themselves to  
24 those areas in which Ms. O'non had something relevant and  
25 admissible to say, and we were comfortable and confident that



1 they would do that, then some of what I have said here today  
2 would simply go to the weight of what she said.

3 But the concern is that when Ms. O'non  
4 appears before the jury in this case, the State will think,  
5 unless they are told otherwise by this Court, that they can  
6 simply turn the switch on and let Ms. O'non tell whatever  
7 stories about Mr. DeMocker that she cares to do. It is time  
8 for the State to understand clearly what the limits are on  
9 the testimony of this witness.

10 We have laid our position out, I think,  
11 pretty clearly in our pleadings in this case, and I hope we  
12 have done so today through cross-examination and through this  
13 argument. But it seems to us that most of what Ms. O'non has  
14 to say is either improper 404(b) character evidence with no  
15 corresponding exception in the rule that would permit it to  
16 be admitted, or it is highly prejudicial evidence with no  
17 probative value and, therefore, excludable under Rule 403.

18 So I think we have made the record that  
19 we need to make here, but we are asking the Court to be  
20 really clear with the State on this witness, because this  
21 witness has the capacity, if not closely checked by the  
22 Court, to go off and tell stories. She did that during her  
23 interview, she did that in her statements to the police, and  
24 to a certain extent, she was trying to do that today. And  
25 those stories are harmful, prejudicial, but most of all, they

1 are inadmissible in this trial.

2 THE COURT: Mr. Butner.

3 MR. BUTNER: Judge, obviously she was properly  
4 noticed. She has been thoroughly interviewed by the defense,  
5 and that took place on February 23rd.

6 I'd submit to the Court that her  
7 testimony is very credible. There is really nothing to  
8 contradict her testimony, and it is basically probative, not  
9 prejudicial. It is probative of the increasing pressure that  
10 Mr. DeMocker was experiencing as his divorce was resolving,  
11 as his business partnership with Barb O'non was breaking up,  
12 as his relationship with Carol Kennedy was breaking up, as  
13 his relationship with Barb O'non was breaking up. And this  
14 pressure was evidenced by his becoming more angry.

15 These aren't terrible acts. These aren't  
16 acts that are going to demonstrate that he has bad character.  
17 These are acts that are going to demonstrate that he had  
18 intent when he killed Carol Kennedy, and it proves the  
19 motives that he had, the financial motive that he had in  
20 killing Carol Kennedy, and it demonstrates an absence of  
21 mistake here. He came up with a list, as we have shown  
22 already. But he was thinking about killing Carol Kennedy,  
23 and he was become being angry about it, and he actually then,  
24 of course, did kill Carol Kennedy.

25 It is argued that that divorce was done.

1 No. The decree was entered, Judge. We have evidence already  
2 before the Court that they were still fighting about money.  
3 What was not done are the payments. Mr. DeMocker was just  
4 embarking upon eight years of payments to Carol Kennedy and  
5 also a painful split of his own 401-K of about a  
6 190-some-thousand dollars. And he was very upset about that,  
7 too.

8 So this is ongoing evidence of the  
9 financial pressure that he was experiencing and the personal  
10 pressure, emotional-type pressure that he was experiencing as  
11 his life, as he knew it, was crumbling and breaking apart.  
12 And the two main women in his life, he was breaking up with,  
13 not to mention the fact that the main financial aspects of  
14 his life were breaking up and being divided and taken away  
15 from him, and him being required to make substantial payments  
16 to Carol Kennedy and him losing one-third -- I should more  
17 accurately state 30-percent of the net assets that he was  
18 managing.

19 So I would submit, Judge, that this is  
20 highly probative of the kind of pressure that he was  
21 experiencing when he cracked and killed his wife. Thank you.

22 THE COURT: With regard to the 404 matter, I  
23 see Miss O'non's testimony relating to 404 matters as  
24 primarily having to do with the allegations of the invitation  
25 for the trip to Colorado to go camping, the two incidents of

1 alleged anger on the part of the defendant, and a 404  
2 consideration, as it regards relationships with people other  
3 than Carol Kennedy and other than Miss O'non, when she is  
4 talking about her own relationship with him in a business as  
5 well as an intimate way.

6 With regard to the two occasions of  
7 anger, there was some definition for where it occurred.  
8 There was a general definition of when it occurred over the  
9 course of a year or possibly longer. I don't think that  
10 clear and convincing evidence has been provided as far as  
11 exactly when it occurred.

12 The definition of what took place, that  
13 was given a good description of what was seen, that there was  
14 some argument over business matters and allegations that the  
15 chair was pushed back rapidly on the first occasion and then  
16 he came over to the doorway to where she was and made no  
17 threats, lifted no hand, that he was angry at that time. The  
18 State argues that this is evidence that the defendant was  
19 becoming increasingly angry. That is contradicted by the  
20 testimony of the witness who says that she didn't notice he  
21 was increasingly angry over that course of time.

22 I think that it has real problems with  
23 regard to the considerations of what it is intended to be  
24 used for. Absence of mistake, when it comes to a homicide, I  
25 don't find that as a pertinent reason for admitting this,

1 this testimony. So it really goes to character and asks the  
2 jury to essentially find that because he was angry on two  
3 specific occasions with Miss O'non, that he was also angry  
4 and could have carried out a murder of his then ex-wife.

5 So I think that prejudicial value is  
6 significantly outweighing the probative value for this  
7 testimony. I am going to preclude the evidence of the two  
8 instances of what Miss O'non testified about. And a good  
9 part of that is the lack of any real notion as to when it  
10 happened, circumstances of whether anybody else witnessed it.

11 But honestly, the nature of what it is  
12 being used for -- and I think it is being used for  
13 impermissible character evidence rather than any permissible  
14 purpose -- but nonetheless, in a 403 weighing, I would find  
15 that the evidence is unduly prejudicial versus its very  
16 limited probative value, and it doesn't prove increasing  
17 anger over time. There was no fear -- though there was some  
18 sudden surprise at the way in which the defendant behaved on  
19 the particular occasions -- that there wasn't any threat or  
20 any longstanding fear, given what the rest of the testimony  
21 was about the further relationships.

22 Testimony about other statements made by  
23 the defendant or characterizations of the defendant as being  
24 unhappy over paying a large sum of money, I don't think the  
25 characterization is allowable. There are problems with

1 regard to the foundation as to when that is occurring. There  
2 are foundational problems with regard to -- and she couldn't  
3 give any time frame on when Mr. DeMocker allegedly made the  
4 statement about possibly being a million dollars in debt. I  
5 think that is also lacking in foundation and unduly  
6 prejudicial. I am going to preclude that.

7 With regard to the general breakup of the  
8 business relationship, I think that is not prior bad act  
9 material. I think that that is simply descriptive of what  
10 was going on in the year or so or actually the few months  
11 prior to Carol Kennedy's death. I think that's relevant. I  
12 think it is admissible.

13 Her own notions -- that is to say,  
14 Miss O'non's own notions about having some reluctance to go  
15 on a camping trip, I don't find that probative or relevant.  
16 Her mental state is not at issue in the case. So whether she  
17 was afraid or not afraid to go on a camping trip, I don't  
18 find that information to be admissible or relevant and would  
19 disallow that.

20 His -- any statement that can -- in which  
21 sufficient foundation can be laid, that the feeling by  
22 Mr. DeMocker was that the terms of the dissolution were not  
23 fair, I think is fair game with regard to his financial  
24 status at the time. So I won't preclude that. But I think  
25 that there are some real issues with regard to the

1 foundation. I didn't hear a good foundation with regard to  
2 that today, and so there will have to be some careful  
3 foundation laid to be able to get into any statements and not  
4 characterizations of what was said, but to the best of her  
5 ability, a statement of what the defendant said.

6 Types of shoes that he had. She can't  
7 testify that they were identical. She can only testify that  
8 there were a large number of running shoes, what she called  
9 "tennis shoes." She can testify about the shoes, but I don't  
10 think she can say anything about the particular shoes in  
11 Exhibit 169. She simply wasn't attentive to that.

12 The request to marry multiple times, I  
13 don't find that probative of any particular issue in the  
14 case. I am going to preclude that. I don't find that  
15 information relevant or whether there were proposals to other  
16 women relevant for any genuine purpose at issue in the case.  
17 I will preclude that finding that -- that ruling supported by  
18 404, as well as by 403.

19 I don't know that spending the night  
20 together on a couple of occasions, when both are consenting  
21 adults, after the divorce had been granted, is something that  
22 is prejudicial.

23 The story of what the defendant was doing  
24 and where he was in terms of admission by a party I think is  
25 permissible. I think there was sufficient clarity as to when

1 that discussion took place. So that is allowable, but as I  
2 understand it, it's basically the same story that the  
3 defendant gave the police -- more or less. So in general, I  
4 think she can testify about her financial relationship, about  
5 the fact that they had a personal relationship.

6 Wishing Carol dead on occasions, I didn't  
7 find sufficient foundation for precisely what was said. I  
8 don't think it what wishing that Carol was dead. I do think  
9 it was more along the lines that Mr. Sears indicated the  
10 testimony was, that "they," which I think refers to either  
11 himself and/or children, would be better off. But I think  
12 that carries such a potential prejudicial bombshell that I  
13 think that the prejudicial value significantly outweighs the  
14 probative value as far as that goes. So I will rule that  
15 inadmissible.

16 Other questions that I haven't addressed  
17 that you think I need to?

18 MR. SEARS: Your Honor, there was the -- the  
19 statement that was elicited about whether Mr. DeMocker told  
20 her that this was an accident. I think the inference from  
21 the State was that they would want the jury to draw was that  
22 Mr. DeMocker was lying to her, that he knew by the time that  
23 he had this conversation that it was not necessarily an  
24 accident. She said on cross-examination that she couldn't  
25 remember what it was, but she was leaning towards what I was



1 suggesting, which was that Mr. DeMocker told her that the  
2 police said it might have been an accident. The prejudicial  
3 effect of that in the 403 balancing, I think, would point to  
4 the exclusion of that, because the State would simply want  
5 that out there for the jury to think that Mr. DeMocker was  
6 lying and covering up what he had done.

7 THE COURT: I don't think she was sufficiently  
8 definite on that issue to allow that testimony, given what  
9 your lack of recollection was. So I will disallow that, as  
10 well.

11 MR. SEARS: There were two other areas, Your  
12 Honor. One of them was a new area for us, at least, where  
13 she was allowed on redirect to say that Mr. DeMocker didn't  
14 express any remorse.

15 THE COURT: That was an issue I was about to  
16 take up. I don't think that -- first of all, I don't think  
17 that that comment was a statement. It was more a  
18 characterization that there wasn't anything that was said.

19 I think if he is -- if he is the one that  
20 did the harm to Ms. Kennedy, then one may expect some sort of  
21 remorse, potentially, for that, and what his mental state is.  
22 If he is the one that didn't do the harm to Ms. Kennedy, I  
23 think different people can react in different ways with  
24 regard to that, and I think it carries a high degree of  
25 prejudice and isn't very probative of whether he had anything

1 to do with this or not. To not say something, that is  
2 attributing a failure to say something as having some kind of  
3 probative value when he's -- I don't find it in the context  
4 of an admission by silence when she doesn't confront him, she  
5 doesn't ask him about how he feels. He simply doesn't say  
6 anything to her about how he feels about Miss Kennedy being  
7 dead. I don't find that probative and would preclude it for  
8 that reason. It is not an admission by silence.

9 MR. SEARS: One last matter, Your Honor.  
10 Mr. Butner talked about the e-mails, and if you remember, you  
11 had precluded generally --

12 THE COURT: I think we still have to discuss  
13 those, and --

14 MR. SEARS: We have a separate motion dealing  
15 with those.

16 THE COURT: My intention is to have you come  
17 in at nine o'clock. I will give you nine o'clock on Friday,  
18 the 2nd of April, to noon. And then from 1:30, probably, to  
19 probably 3:00. I am not going to hold everybody beyond three  
20 o'clock.

21 MR. SEARS: About 9:00 to noon and 1:30 to  
22 3:00?

23 THE COURT: Yes.

24 MR. SEARS: Thank you, Your Honor.

25 THE COURT: And we will take up the other

1 motions at that time. It's 5:20.

2 Any other issues that you think I really  
3 need to cover right now?

4 MR. HAMMOND: Very quickly, Your Honor. I  
5 just think we need to have on the record the statement we had  
6 in chambers this morning. There was a conversation in  
7 chambers in which the State acknowledged that it did not  
8 under any circumstances intend to use the HGH information or  
9 the Denmark information unless and until we reached a penalty  
10 hearing in the case, and I don't think it was on the record.

11 THE COURT: You would confirm that,  
12 Mr. Butner?

13 MR. BUTNER: I would confirm that, Judge, and  
14 it's also in our pleadings.

15 THE COURT: I recall that.

16 The other thing that I thought better get  
17 on the record before I forget about it is I received an  
18 e-mail notification from the jury commissioner's office,  
19 Ms. Merlitz, about a particular juror, Juror Smith,  
20 No. 250670, who came in yesterday to fill out the  
21 questionnaire. She called Margaret this morning, indicating  
22 that when she got home, despite the Court's directions to the  
23 contrary in both the written instructions and the video that  
24 was made, she did some research and looked Mr. DeMocker's  
25 name up, because she apparently is a member of the Hassayampa

1 golf club. She looked up Mr. DeMocker's name in her golf  
2 book. And then after her husband had -- he knew  
3 Mr. DeMocker, and her husband made a statement acknowledging  
4 this matter, in fact, attributing the crime, essentially, to  
5 Mr. DeMocker. So I provided that information to both  
6 counsel. I presume both counsel are -- would strike Juror  
7 Smith for cause. The Court can strike Juror Smith for cause.  
8 In fact, I wonder if I ought to do more than that and bring  
9 her in on a contempt citation.

10 MR. HAMMOND: Your Honor, I wanted to ask that  
11 question. Obviously, she needs to be stricken, but I wonder  
12 what instruction ought to be given to jurors who are  
13 dismissed and who are dismissed under these circumstances.  
14 Who knows what else she may purport to say to people after  
15 she gets the word that she is no longer a juror.

16 THE COURT: Okay. I don't mind composing a  
17 letter or having her come in and giving her some direction in  
18 court at some point. We can discuss that, probably, on  
19 Friday, but I wanted to bring that immediately to counsel's  
20 attention.

21 Okay. It's 25 after 5:00. If there's nothing  
22 else that we need immediately, I will take up the rest of the  
23 issues at nine o'clock on Friday, April 2nd.

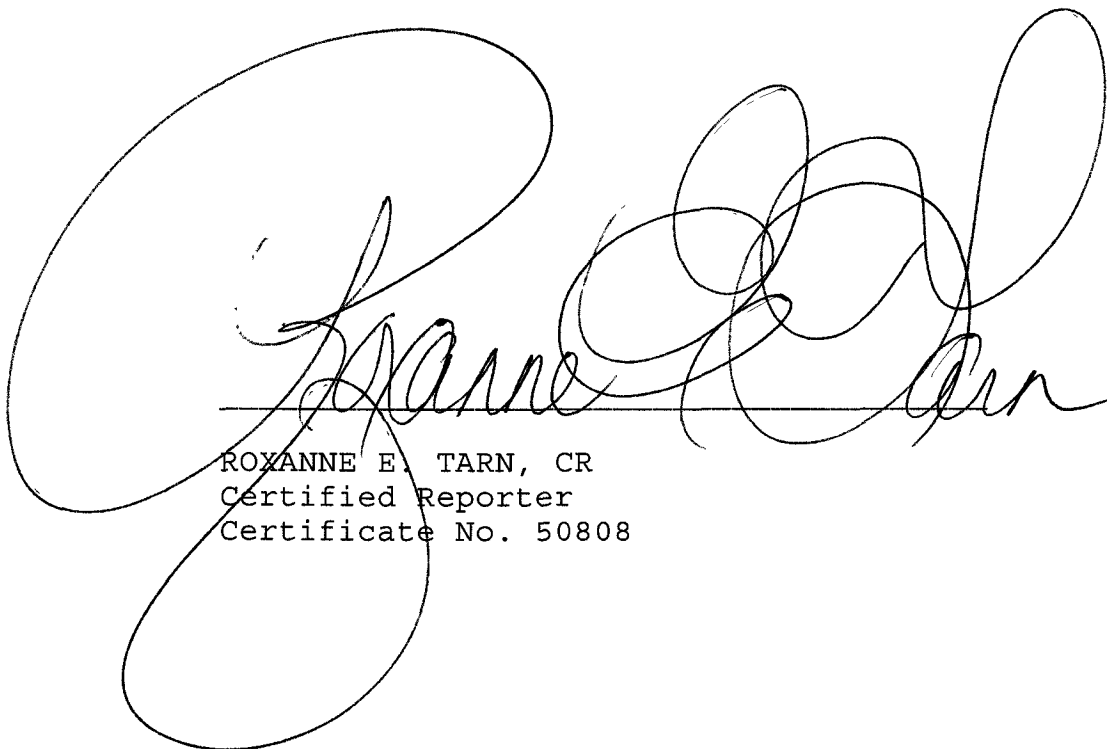
24 (Whereupon, these proceedings were concluded.)

25 \*\*\*o0o\*\*\*

C E R T I F I C A T E

I, ROXANNE E. TARN, CR, a Certified Reporter  
in the State of Arizona, do hereby certify that the foregoing  
pages 1 - 100 constitute a full, true, and accurate  
transcript of the proceedings had in the foregoing matter,  
all done to the best of my skill and ability.

SIGNED and dated this 9th day of April, 2010.



ROXANNE E. TARN, CR  
Certified Reporter  
Certificate No. 50808